Appendix I

Statement of Facts Briefed by Respondent in the New York Court of Appeals

THE TESTIMONY AT THE TRIAL

The People's Case

Discovery of the deceased and cause of death

At about 6:10 a.m. on November 8, 1963, **Fred Petraca,** stationary engineer and operator of the Spuyten Duyvil Drawbridge, observed, first with his naked eye and then with field glasses, a body floating face-down between bridge abutments near the mid-channel of the Harlem River, some 150-200 feet away (Exh. 3; 107, 109-12, 119). Following subsequent notification, Patrolman **William Dwyer** went to the scene and observed that the body "was face down and * * * the legs [ankles] * * * were tied with a clothesline rope, and that rope extended from the feet of the body under the water to some kind of pile" (126, 133). He also recalled that the deceased wore pants, black shoes, socks, a shirt collar and tie (129).

Patrolman **William Auld** directed the placing and then raising of the body in a "Stokes basket" onto the police launch to which he was then assigned (150, 153). After being taken to shore, search of various pockets revealed $441, miscellaneous papers and other effects (157-9). Patrolman Auld also testified that the Harlem River's flow depended on the tide; part of the time it ran northerly and part of the time southerly (171).

Dr. **John F. Devlin,** Associate Medical Examiner of Manhattan, performed the autopsy of the deceased on Novem-

ber 9, 1963 (238-40). He described the subject as a "well-developed, well-nourished, decomposed white male, weighed 150 pounds, measured 6 feet, one inch in height" (242). The witness removed a rope [Exh. 9] from the deceased's ankles and observed "superficial [lineal depressions running parallel around the chest] the exact nature of which was not known but which were consistent with a rope being tied several times around the chest" (242-3).

Dr. Devlin explored four gunshot wounds, which he numbered for convenience of description (244, 252). Speaking of wound number one first, he observed that a .22 calibre bullet, which he labelled MD-1, passed through the mandible, the floor of the mouth, the bones at the base of the skull, coming to rest "in the posterior portion of the petrous portion of the right temporal lobe" (245).

> "Also, there were two holes—I mean there were holes in the dura, which is a membrane that surrounds the brain. One of these lied right over the hole in the skull, and in the posterior parietal occipital region there were two small holes, which were secondary to the bullet shearing off and fragments of the bullet which had penetrated this point, and these two fragments were found imbedded in the skull" (245-6).

Wound number two was in the lower jaw of the right side of the face (246). Wound number three lay three inches below the collar bone on the left anterior chest wall and three and one-half inches above wound number four (248-9).

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Ballistics examination

Detective **Walter J. Haase**, for 15 years specially assigned to the Ballistic Squad, weighed and examined by microscope the four lead bullets [Exh. 20] recovered by Dr. Devlin (261-5). Three of the bullets [MD-2, 3, 4] were fired from a weapon with a "right twist rifling"; all were of a .22 calibre (265). He described a rifling "as a finishing of the interior surface of the barrel of a firearm" (266). At one point the witness indicated that only on the bullet labelled MD-4 were there six lands and grooves to the right; elsewhere he indicated that all the bullets were so marked (265, 267). While all of the bullets recovered were deformed, MD-1 was the least recognizable (265-7).

The week of the murder

William Tishman, 31-year-old, $22,000-a-year buyer for the Wucker Furniture Company, was for several years a friend of the defendant and his family, and through him first met the deceased (540-2, 601, 614). An active bettor, Mr. Tishman and his gambling partner Bob Katz bet with the deceased, and lost, a total of $16,690 on the 1963 World Series and assorted football contests (561, 603-4, 621). On October 7, 1963, the day after the Series was over, Mr. Tishman called the defendant and asked to borrow "ten, twelve thousand, and he [the defendant] said he was making some arrangements to borrow money, and that he would see if he could borrow for me too" (563, 1513). The defendant noted that he was also indebted to the deceased some $7,000 (563).

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The following day, Tuesday, the defendant told Mr. Tishman he was taking out a bank loan (564). Upon a request for haste, the defendant advised that since he was meeting the deceased "on Thursday [October 10th] he would take care of it, pay him what he owed him and what he was going to lend me, and I said I would call Ruby [Markowitz, the deceased] up and ask him if it would be all right and let him know" (564).

The next afternoon, October 9th, Mr. Tishman and the defendant met at the store of the former (565).

> "Well, we went over the conversation that he was to meet Ruby on Thursday and give him the money that he was going to lend Mr. Katz and myself. At that time I gave him $2,500, in cash, which was part of the moneys above the $12,000 I was going to borrow from him, and I also gave him a promissory note [Exh. 53] for the $12,000, and told him that I would give him the balance [$2190] the next day, as soon as I got it from Mr. Katz" (565-6).

At 8:30 a.m. on October 10, 1963, a Thursday, the deceased left his home dressed in business clothes (272). Mrs. **Naomi Markowitz**, his wife of fourteen years, did not see him alive again (272-3). In the early afternoon Mr. **Tishman** advised the deceased, by telephone, of the arrangements he and the defendant had made, and, in addition, placed a bet with him, arranging for a return call after the deceased met with the defendant "to get paid off" (571, 573-4, 657-8). Meanwhile, although this was the day that the defendant was to come to Mr. Tishman's store

for the outstanding $2190, which the defendant had said "he needed," he did not appear (572, 681).

At about noon, or 12:30 p.m. on the same day, **Jerry Bergman** spoke with the deceased by telephone (273, 276). Mr. Bergman, also called Jerry the Whale, a shipping clerk by profession with a criminal record for bookmaking, periodically placed bets with the deceased (274-5, 286, 350). Pursuant to a second telephone call utilizing their standard practice of an answering service and coded names, the deceased called back at about 4:00 p.m., and a meeting was arranged at the corner of 32nd Street and Madison Avenue (276, 278-9). The witness arrived punctually for the 4:30 p.m. appointment, waited in vain about 90 minutes and then departed (279-80).

As the result of subsequent inquiries, shortly after 7:30 p.m. one **William**, also called **Burt Markowitz**, a clerk in a theatre ticket office, was called and asked if he knew where to contact (a man whose description fitted) the defendant (281-2, 307-12, 388-9, 397, 399). Mr. Markowitz, not related to the deceased, two years earlier had introduced the deceased to the defendant upon the latter's request for assistance in finding a new bookmaker (392, 394, 406). Mr. Markowitz contacted the defendant who advised that he had seen the deceased at about 4:00 p.m. that afternoon (354, 357-8, 382-3, 398).

In the meantime, despite the deceased's promise to Mr. **Tishman** that he would call back after meeting the defendant, he failed to do so and Mr. Tishman's efforts to

reach the deceased were in vain (574). Between 7:30 and 8:30 p.m. Mr. Tishman called the defendant, who told him of meeting and paying the deceased at a 61st Street gasoline station, adding that Mr. Tishman

> "still owed him a balance of money, and that he needed it, and would I meet him the next day and give it to him. I told him to come up any time during the day to get the money. And he said he wouldn't be up in my neighborhood. I told him that I was going to meet Ruby at nine o'clock in the morning, and that—he said on his way downtown he would pick up the money at eight-thirty in front of my house" (574-5).

At 8:30 a.m. on Friday, the 11th, Mr. Tishman met with the defendant as scheduled and gave him the $2190 (577-8, 669). At that time the defendant told him that he "received a phone call from Ruby's brother, or brother-in-law," advising that the deceased did not come home the previous night (577, 670). He added that when he paid the deceased at the gas station, "that there was another man in the car. And in case anything happened, he got into the car and that his fingerprints were on the car" (577). The defendant was "worried about this other man" (577).

Mr. Tishman told the defendant of his pending appointment with the deceased at Schrafft's on East 79th Street (579-80). The defendant went elsewhere while Mr. Tishman joined his gambling partner, Mr. Katz, to keep a rendezvous which was, in fact, beyond fulfillment (579-81). During the next weeks Messrs. Katz and Tishman paid the defendant the face value of the $12,000 promissory note [Exh. 53], and the transaction finally concluded with the return of the note in January, 1964 (582, 677-9).

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Sometime between noon and 2:00 p.m. on Friday the 11th, the defendant met with Mr. **Burt Markowitz**, the ticket agent, seeking tickets for Sunday's football Giant game (399-400). He also inquired who the deceased's friend was who had prompted the phone call of the previous evening, adding, " 'please get this guy off my back'; he didn't want him to know where he lived, or his phone number, and so forth" (400).

On Saturday the 12th, the missing car of the deceased was spotted by his brother-in-law and his grocer-gambling partner, who together searched the streets of Manhattan (317-18). It was located on First Avenue at 64th Street (321-3). Members of the dead man's family were contacted, the automobile keys thereafter delivered and, with assistance from the nearby precinct, the car and trunk were unlocked (323-7). Both were empty (327). Mr. Josephy drove the car to the Brooklyn garage where it was ordinarily left; while there he observed one of the members of the family unlock the glove compartment (327-8). Football tickets and three hundred dollars were uncovered (328).

That same day, Mr. **Burt Markowitz** received a visit from the deceased's brother-in-law, Mr. Silverstein (400). The latter informed him of finding the missing automobile and two sets ("a set is a single ticket for all the games that the Giants play at home") of football tickets in the glove compartment (401). Mr. Markowitz called the defendant, passing on the news of the discovery of the missing automobile (402). He recalled the defendant answering, " 'Gee, * * * my fingerprints are all over the car' " (402).

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The site of the crime

In June, 1963, the defendant, who was a limited partner in the organization owning 406 East 63rd Street, asked **J. Harvey Rosenthal**, the general partner, if one of the remaining apartments might be leased by one William Weissman (503, 506-7, 1445). Mr. Rosenthal, long a friend of the defendant, agreed, giving him a two year lease to be signed for apartment 5-B (504, 508, 510). That same month the defendant had asked **Billy Tishman** to join him in renting such an apartment (546). Mr. Tishman refused (547). A short time later, the defendant returned the lease to Mr. **Rosenthal** bearing the Weissman signature; the rental was $178 per month (508, 510). The defendant was given the keys to the apartment, and each month thereafter delivered the rent in cash (511-12). In July the defendant obtained furniture for the apartment from Mr. **Tishman** (524, 548). This included wall-to-wall carpeting "a persimmon orange color," and living room and bed room furniture (549). On two occasions Mr. Tishman went to apartment 5-B in connection with the furnishings; on the second visit he met the defendant, who was seated watching television (551-4, 599-600).

In August the defendant telephoned Mrs. **Lazarus** and

> "gave me an address on East 63rd Street, and told me to meet him there. And when I went there, he told me that—he asked me how I liked the apartment. And he told me it was an apartment that he had taken as a bachelor apartment.
>
> "Q. Do you remember the address of this apartment? A. 406 East 63rd Street.

"Q. And was the apartment furnished at the time you went there? A. Partially; not completely" (1116).

* * *

"Q. Did you have sexual relations with the defendant on your first visit to the 63rd Street apartment? A. Yes.

"Q. Now, did you have any further conversation with the defendant before you left the apartment that day? A. I did.

"Q. Please keep your voice up now, and tell us what was said. A. He asked me to please have a telephone installed in the name of Bill Weissman, and to please have another set of keys made for the apartment, and to please pay the maid service bills that had been sent there" (1117).

* * *

"Q. And did you ask the defendant who this Bill Weissman was? A. No. He said that that was the name he was using for the apartment.

"Q. And did you have a telephone installed? A. I did" (1118).

* * *

"Q. And what name did you give as a reference? A. I gave Mark's name.

"Q. Mark Fein? A. Yes" (1118).

In October, 1963, "a week or two after the World Series," when his delivery men were unsuccessful in gaining access to the apartment, Mr. **Tishman** spoke with the defendant "and he told me that he forgot to tell me that he got rid of the apartment" (555, 557, 652).

Mr. **Rosenthal** added "I believe in December, Mr. Fein indicated to me that the tenant no longer wished to occupy the apartment" (512). At Mr. Rosenthal's request, the

defendant agreed to obtain the rent until 5-B could be leased anew (513-14). The defendant returned the keys and the following month the "Weissman" lease was terminated (514, 517).

The defendant's activities following the crime

There were three persons called to assist the defendant in concealing the homicide. They were Carmela Lazarus, Geraldine Boxer and David Broudy.

Carmela Lazarus, 37, who was also known during various times in her life as Carmela Donofrio, Candy Delmar, Gloria Keith, Gloria Gray, Gloria Kendal, Mrs. Fontaine, Margaret Foster and Gloria Foster (it was this name by which the defendant knew her), was convicted for vagrancy at the age of 18 and had commenced a career of prostitution by her 21st birthday (1099-1105, 1119, 1217). She remained so occupied until January 8, 1964 (1254). Twice married, presently to Michael Lazarus, otherwise known as Michael Paris, Mrs. Lazarus plied her profession during her husband's business hours and also acted as a procurer of girls (1106-9, 1231).

She first met the defendant in 1960; he shortly became a "frequent" paying customer (1112). Although there was no fixed arrangement, by 1963 the defendant gave her between $400 and $700 every month, a stipend which also covered the cost of girls Mrs. Lazarus supplied, at his request, for his friends, and exhibitions of lesbianism (1113-16, 1123, 1289).

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Mrs. Lazarus testified at both the grand jury proceedings and the trial itself after having waived her immunity (1189-90).

David Broudy, 32-year-old cab driver, hairdresser, aspiring inventor, who at the time of the trial was convalescing from an injury sustained the previous summer, had known Mrs. Lazarus since 1957, and her husband Michael, a fellow hairdresser, some fifteen years (875-9, 953). He testified under a grant of immunity for the crimes of accessory after the fact in removing a body and failing to report a death, and expressed a willingness to "do anything for Gloria [Mrs. Lazarus] * * * lie for Gloria" (891, 959, 978-9).

Miss **Geraldine Boxer,** 22-year-old college graduate and copy writer, met daily, in early October, 1963, with Mrs. Lazarus (693-4, 700). Each day, upon the completion of Miss Boxer's work at her 59th Street and 10th Avenue office, the two would meet for a light supper, after which Miss Boxer would drive Mrs. Lazarus to the Swedish School of Massage at 46th Street and 8th Avenue, where the latter was attending evening classes (700-1, 1130). Miss Boxer would then continue on to her own course at the Fashion Institute of Technology (699-701). Final arrangements for the daily rendezvous would ordinarly be made by phone during the day (702).

On the afternoon of October 10, 1963, Miss Boxer telephoned Mrs. Lazarus, arranging for their daily night school rendezvous; she placed the time of the call between

2:30 and 4:30 p.m. (702, 704). Shortly after 5:00 p.m., the hour Mrs. **Lazarus** fixed for that telephone conversation, Miss **Boxer** left her office, picked up her nearby car and drove to Mrs. Lazarus' apartment at 125 East 73rd Street (705, 905, 1132). Double parking, she called on the building's intercom; Mrs. Lazarus was not there, but one Sandra Ede answered and a brief conversation ensued (705-6). Miss Boxer estimated the time to be between 5:35 and 5:40 p.m. (707).

Meanwhile, at an hour which Mrs. **Lazarus** thought to be between 5:30 and 5:45 p.m., the defendant telephoned, and said,

> " 'What are you doing, Gloria?' And I said, 'I'm getting ready to go to school.'
>
> "And he said, 'I'm at the apartment on 63rd Street, and I'd like to see you right away.' And I said, 'That's impossible.' I said, 'You'll have to wait until I finish school, which will be about eight or nine o'clock.'
>
> "And he said, 'I can't wait, Gloria. I have to see you right away.' And I said, 'Well, if there is anything I can do for you meanwhile, if I can would you like me to send somebody over?
>
> * * *
>
> "So he said, 'Please, Gloria', he said, 'I must see you. Don't fail me.' So I said, 'I'll be right over.'
>
> * * *
>
> " 'I'll leave immediately' " (1133).

Mrs. Lazarus spoke to Sandra and left, taking a taxi to the defendant's 63rd Street apartment (1134). She was

dressed in slacks, the outfit she intended to wear to her exercise class, and judged her arrival to be before 6:00 p.m.; ringing the bell, she was let in by the defendant (1135, 1333).

> "A. He was very flushed. His hair was messed, and his eyes were enormous. And he said, 'Come in.' And I went in" (1136).

In the living-room she saw a big brass-trimmed trunk, adjacent to it a duffle bag, and recalled that a piece of the carpeting was cut (1136). The chair and couch had been rearranged since her prior visit (1335). Inquiring "what happened?" * * *

> "He said to me, 'what do you think is in that trunk, Gloria'?
>
> * * *
>
> A. I said, 'I have no idea.'
>
> "Q. And what, if anything, did the defendant say? A. He said, 'It's the body of a dead man, my bookmaker, Ruby.'
>
> * * *
>
> "A. He said, 'I had to meet him this afternoon to pay him the money that we lost on the series.' And he stood up from where he was sitting, and he started to show me a banknote—a green piece of paper. And he said, 'Look at this. Poor Billy, he didn't have the money. And I met him at four o'clock. And he came up here. And we were talking. And we had words. And I shot him.' He said, 'Please, Gloria, help me.' He said, 'There's nobody else I can turn to. I can't call any of my friends; I can't call my famliy. You're the only one. Please help me.'

"So I said, 'Well, what do you want me to do?' So he said, 'Help me get the trunk out of here and get rid of it.'

"So I said, 'Well, why don't you call the police and tell them that while you were talking to this man, somebody came in and shot him, stole the money and ran out?' So he said, 'That's good,' he said, 'but I can't call the police.' He said, 'I can't be involved with the police.' He said, 'I would be ruined socially and financially.' He said, 'I just could not be involved with the police, nor with a bookmaker.'

"So I said, 'Well, what do you want me to do?' So he said, 'The first thing you have to do', he said, 'is to call another friend—call a friend.'

"I said, 'Call a friend?' I said, 'Why should I call a friend?' I said, 'I'm very strong.' So he said, 'The trunk is very heavy, Gloria.'

"So I said, 'But I'm very strong. How heavy could it be?' He said, 'Believe me, it's very heavy.'

"So I went to the phone and I called my friend, David" (1137-9).

At an hour which he fixed as 5:30 p. m., Mrs. Lazarus telephoned Mr. **Broudy**, who she knew was temporarily unemployed; he left his Bronx apartment and borrowing his brother's car drove immediately to 63rd Street and First Avenue (875, 881-2, 961, 1346).

Meanwhile, Miss **Boxer** had driven to 406 East 63rd Street, parked in front and rang the Weissman apartment from the lobby intercom (708-9). There being no response, she left; as she was returning to her car she saw Mrs. Lazarus, who had responded to her intercom buzz (709-10, 1139). They conversed and Mrs. Lazarus then returned

upstairs while Miss Boxer awaited the arrival of Mr. Broudy (710). Mrs. **Lazarus** inquired of the defendant,

> " 'Are you sure the man in the trunk is dead?'
>
> "Q. And what did he say when you said that? A. He said, 'Gloria', he said, 'He's stone, cold dead.' He says, 'Look'. And he lifted the lid to the trunk, and I saw part of an arm, and some new clothesline, and some white material that looked like a shirt. And I turned my back, and I said, 'Spare me the gory details.' And he put the lid down, and went to the window, and he was looking out.
>
> "And I said, 'Do you think anybody heard the shot?' And he said, 'No, Gloria, I don't.' He said, 'It was over an hour ago, and I have been watching, I have been looking out the window, and I haven't seen anything.'
>
> "And so I said, 'Well, you must have been a very busy boy.' I said, 'How did you get the trunk?' And he told me that he bought the trunk in Spanish Harlem; that it was difficult to get a trunk that size because of the language barrier" (1140-1).

In the meantime ten to fifteen minutes after Mrs. Lazarus had left her, Miss **Boxer** saw Mr. Broudy and his car, as described by Mrs. Lazarus (711). She walked down the block after him, and introduced herself (713, 882-3). Mr. **Broudy** estimated the time as 6:00 p.m. (882). The two conversed, walking towards Miss **Boxer's** auto (713). She recalled that a short while after reaching the building, Mr. Broudy rang the Weissman apartment and spoke to Mrs. Lazarus by intercom; a few minutes later, Mrs. Lazarus reappeared (713, 1141).

Mr. **Broudy's** recollection differed, he thought that he and Miss Boxer had come upon Mrs. Lazarus while he was still talking with Miss Boxer (882-3).

Mrs. Lazarus spoke separately with Mr. Broudy and then Miss **Boxer** (713-14). The two women then entered the building and ascended to apartment 5-B while Mr. **Broudy** went to purchase a cheap pair of gloves (714-15, 749, 884). Mrs. Lazarus "knocked on the door or rang the bell, but the door was opened by someone from the inside slightly. Several seconds later" Mrs. Lazarus pushed it open all the way and upon entering, directed Miss **Boxer** to the bedroom (715, 749-50, 1141). Miss Boxer was left alone for some minutes (716), while Mrs. **Lazarus** spoke to the defendant advising him of the arrival of her friends (1144).

Mr. **Broudy**, arriving after his purchase of gloves, was introduced by Mrs. Lazarus to the defendant (892, 972-3). Mr. Broudy was thanked for his help, and when he inquired, "What the hell happened here?", the defendant answered that

> "he was paying a gambling debt to his bookmaker, and the doorbell rang, and somebody burst in; and evidently the person, this bookmaker knew this person and said, 'Oh, my God.' This person shot this man and scooped up the money and left" (893).
>
> * * *
>
> "I said, 'Well, what did this guy look like?' * * * He said he was a tall, dark guy with a hat.
>
> "Q. Did you have any further conversation with the defendant? A. I said 'Well, how did he know that you people were here?'

"And he said, 'Well, he had a previous appointment.'

"Q. Who had a previous appointment? A. This bookmaker.

"Q. Yes? A. 'And he was going to be late, and he called; and he was saying that he was going to be here. And that was that.'

"Q. Was there any further conversation with the defendant at that time? A. Then he said—he said, 'I never saw so much blood.'

"Q. Who said this? A. The defendant.

"Q. Yes? A. And I said, 'Well, is this trunk going to leak?' And he said, 'No,'—he put some canvas bags on the bottom of the trunk.

"Q. Did you have any further conversation with the defendant at that time? A. I said, 'Where did you buy the trunk?' And he said either Spanish Harlem or East Harlem * * * it was one or the other" (894-5).

Miss **Boxer** was then brought into the living room and she too was introduced to the defendant, whom she had never seen before (717-18). She estimated the hour to be 6:10 to 6:15 p.m. (718). In the middle of the room, near the window, was a black steamer trunk approximately 32" x 32" x 43", trimmed with brass or gold (720-21, 794-6, 895, 896). Miss Boxer and Mr. Broudy independently noticed a portion of the carpet had been torn off, "something like 18 x 18 inches, and it was cut away in a jagged pattern" (720, 895). A conversation followed concerning the difficulty of fitting the trunk in either Mr. Broudy's or Miss Boxer's car and the defendant "suggested that he could rent a car, a station wagon" (722-3, 896-7, 1145).

The defendant then telephoned an auto rental business located at 445 East 78th Street (821-2). He reached an answering service, the concern having closed at 6:00 p.m., and Miss Boxer heard him say that "he had rented a car [or station wagon] from them sometime before and that he would like to rent the same car [or station wagon]" (723-4, 823-6). There was a follow-up call from **Samuel Newman**, president of the rental concern, who advised that the defendant's request for a station wagon would be filled (725-6, 821, 829-33). Mr. Newman then arranged for the vehicle to be left at the garage which adjoined his business (832-3). Meanwhile, Miss Boxer recalled the defendant saying that he "would pick it up shortly; he would be there to get * * * The car, the station wagon" (724-5, 897-8).

Mrs. **Lazarus** and the defendant then departed to pick up the station wagon (727, 898-9, 1146). On their way out of the building, Mrs. Lazarus recalled they came upon, and the defendant greeted, the rental agent (1146-7). **Donald Galka** confirmed this meeting (1148-50, 1452, 1476, 1552). The waiting vehicle was obtained from garage attendant **Earl Roper**, the defendant giving a one dollar tip (1014-15).

Between fifteen and twenty minutes after leaving, they were back with Miss **Boxer** and Mr. Broudy at the apartment (727).

Mr. Broudy and the defendant moved the trunk to the elevator while Miss Boxer watched Mrs. Lazarus pick up two duffle bags, one of which came from beneath the trunk and the other, shaped "sort of like a pillow," contained

pieces of carpeting (728-9, 899, 1150, 1366). After descending, the women by stairway, the men and trunk by elevator, the trunk and duffle bags were lifted onto a Chevrolet station wagon which was double parked by the building's front (729-31, 900-2, 913, 1149). It was the same car that had also been rented by the defendant the day before (838-9, 1017-18, 1048-9). Three entered the station wagon, leaving the defendant behind, despite his insistence that he come too (731-2, 904).

After the defendant had given Mr. Broudy the keys and told him where to return the vehicle, the three drove to Mrs. **Lazarus'** building and double parked while she went upstairs (732, 905, 1152). Mrs. Lazarus estimated the hour to be between 7:00 and 8:00 p.m. (1369). Despite separate communications over the intercom from both Miss **Boxer** and Mr. **Broudy**, Mrs. Lazarus was gone an estimated 45 minutes (733, 791, 906). Mrs. **Lazarus** thought "ten to twenty-five minutes" had elapsed (1370). While in her apartment, she left a message with Sandra, took some sixty dollars in cash, and had herself a drink (1153). Upon return, she called Mr. Broudy aside, and handed him forty to fifty dollars (734, 907).

The three then drove off, up the East River Drive, onto the Harlem River Drive to the end of Dyckman Street and the Hudson River, retraced their path to 158th Street and then turned north again on the Harlem River Drive, stopping at 178th or 179th Street (737, 908). The trunk was taken from the tailgate of the station wagon (Mr. **Broudy**: "All three of us dragged it out and lifted it over the wall

into the river"; Mrs. **Lazarus**: "All three of us got out, and we carried the trunk to the edge of the water, and pushed it over into the water"; Miss **Boxer**: "She [Mrs. Lazarus] motioned for me to help. And I put my hand somewhere. I did touch the trunk. Just how much of it I lifted I can't judge"), carried to the river wall and dumped over it (738-9, 801, 908, 1155). As Mr. **Broudy** recounted, "There was a crash and a splash" (908). "A thump, and then a splash" was Mrs. **Lazarus'** description, who then returned for the duffle bags and threw them over also (739, 909, 1156). By then it was dark out, the time estimated 8:30 p.m. by Mrs. Lazarus; 7:30 to 7:45 p.m. by Miss **Boxer** (739, 1372).

The three drove to mid-town Manhattan, and dined at a French Restaurant on 48th Street (739-41). Afterwards they stopped briefly for Miss Boxer to run a personal errand (Miss Boxer remembered that the errand was attended to on the way to the meal), and then Mrs. **Lazarus** was taken to her apartment (740, 912, 1157). Sandra Ede was still there (1157). Later on, that evening, the defendant called, inquiring if all went well (1158).

Meanwhile Miss **Boxer** and Mr. **Broudy** drove the station wagon to a garage adjoining a rental agency on 78th Street, between York and First Avenues (743-4, 912-3). Parting shortly after, Mr. Broudy and Miss Boxer did not meet again until the following February at the police station house (750, 913).

A day or two after the murder, the defendant telephoned Mrs. **Lazarus** and asked her to repair the carpet (1158-9).

When she balked, he said, "Please Gloria, don't let me down now" (1159). On Saturday the 12th, Mr. **Broudy** and Mrs. Lazarus went to apartment 5-B at 406 East 63rd Street, let themselves in, and repaired the torn carpet, using a razor, curved needle, thread and extra pieces of carpet that had been stored in a closet (914-6). Mrs. Lazarus washed the tables and chairs, and upon "probing in the wall near the window" attracted Mr. Broudy's attention (917-18). He saw a hole, "the size of a silver dollar" which he then filled with "prepared plaster" (917-18).

Mrs. **Lazarus** had a different recollection of the chronology of the latter event, placing it some days after the carpet was repaired (1161). As she remembered it, the evening following the repair of the carpet, the defendant called (1159).

> "He asked me if the rug was fixed, and I said, 'Yes, it was.'
>
> "And he said, 'Now, please have the lock changed,' he said, 'because I am expecting some furniture to be delivered on Monday, and I don't want them to see the carpet' " (1160).

Mrs. Lazarus directed her maid to have the lock changed the following Monday; it was (1160-1). Within a few days thereafter, meeting the defendant in Apartment 5-B at his request, she noticed a hole in the wall (1161-2). "And I said, 'could that possibly be a bullet hole?' And he said, 'Yes, it could be' " (1162). The subsequent probing with a kitchen knife succeeded only in enlarging the aperture (1162). The defendant asked her to fill the hole with putty.

"I said I didn't know how. He said to please ask David, but I didn't. I waited a few days, and he called me up and he said, 'Please let me get some sleep after all we have been through. Please, this last thing, please do it.'

"Q. When he said this to you what, if anything did you say to him? A. I said I would * * * ask David" (1163).

Mrs. Lazarus got in touch with Mr. Broudy, who carried out the directive (1163-4). Thereafter, Mr. Broudy announced the hole was repaired, handing over a piece of lead he had found in it (1163).. Mrs. Lazarus offered this to the defendant, commenting; "David [Broudy] said it looks like a .22 or .25. He told me to ask you, 'What is it?' The defendant looked at it, shrugged his shoulders and * * * left the bullet on my night table in my bedroom" (1165). Two days later, the defendant volunteered, "By the way it was a .22" (1166). Some three weeks later, Mrs. Lazarus threw the missile away (1376).

As Mr. **Broudy** recalled the order of events, approximately two weeks after he and Mrs. Lazarus first repaired the carpet, the two returned to the death scene and Mr. Broudy painted the area he had previously patched (919).

About a week later, following a conversation with Mrs. Lazarus, Mr. Broudy returned to the patched wall, and with a small chisel removed a piece of lead, which he pocketed (921-2). That same day he gave it to Mrs. Lazarus (923-4, 993). Mr. Broudy plastered the hole again and returned the next day, with Mrs. Lazarus, intending

to paint the patch; it had split, however, so he replastered it (923-5).

Some time after reading about the discovery of the deceased's body, Mr. Broudy spoke with Mrs. Lazarus, returned to apartment 5-B and proceeded to paint the entire living room (961-7, 1167). A few days later the defendant told Mrs. **Lazarus**, "Get rid of all the furniture in the apartment now, and get rid of the rug, get rid of everything" (1168). Upon Mrs. Lazarus' stated reluctance to remove the rug, the defendant insisted,

> "there might be another hole there in the floor where the piece had been torn up the first day, where it was patched up, and he said, 'if there was, please fix it or have David fix it,' and I told him to do it himself because I couldn't ask my friend to do anything else for me, and he said that he couldn't because he was the last one to see the man alive and he thought that he was being followed, so that he couldn't go to the apartment" (1171-2).

There was another meeting between the two, following which Mr. **Broudy** removed many of the furnishings from 5-B, giving all but the radio and television set to Mrs. Lazarus (927-8).

There was one final set of visits to the murder site, during which Mr. Broudy cut up the carpeting, removed it to his car and then disposed of it in separate places in the city (928-30). During one of these visits, Mr. Broudy filled a small hole in the living room floor of apartment 5-B with wood cement (931-3, 1172).

Here, again, Mrs. **Lazarus'** recollection of chronology differed from Mr. Broudy's, she placing the disposal of the furniture after the carpet had been cut up (1173). As she recounted, the defendant called "towards the end of November" and a meeting was arranged (1173).

> "[H]e told me that it was imperative now to get rid of the furniture. Please don't let him down now after all we have been through. So I went into a phone booth and I called the storage company. He said 'Just get rid of it. I don't care what you do with it.' I called the storage company and made arangements for them to come and take the furniture out.
>
> "Q. What storage company was this? A. The Century Moving & Storage.
>
> "Q. Have they done work for you before? A. Yes, many times.
>
> "Q. And was the furniture removed from the apartment? A. Yes" (1173-4).

She stored it under the name of "Weissman" (1194).

The defendant and Mrs. Lazarus kept in "frequent" contact, and, during December, after she was questioned by two New York Police Department detectives, she met with the defendant (1177).

> "This Leman and Lyons were here, two detectives, and they asked me about the apartment on 63rd Street, and about you. And I told them that I knew you, that you were a good friend of mine, and a fine person; but that I didn't know anything about the apartment on 63rd Street" (1177).

At Christmas time, she met the defendant at the office of his attorney, Mr. Blinder (1178). "[W]e said that I

would tell the detectives when they came back again that a friend of mine had stayed in the apartment [that her] * * * name was Margaret Foster * * * [that] she went to Florida, and * * * just never came back" (1178).

Shortly thereafter, Mrs. Lazarus and her husband went to the Virgin Islands for "eight or nine days" (1179). Just before she left or just after she returned, Mrs. Lazarus, on being questioned by the police, told them about her roommate Margaret Foster, whom she identified as a girl who entertained the defendant on occasion and who was presently seeking a Florida divorce (1277-80).

Police efforts to obtain information about "Margaret Foster" accelerated after her return from the Caribbean; during one attempted police visit, Mrs. Lazarus hurriedly left her apartment forsaking all of her belongings (1180, 1604). She went to the Hotel Warwick (1182).

She met the defendant a few days later, January 11, 1964, and told him of her plight (1180-1). The defendant said he needed a "couple of weeks" to "work it out" (1181). In about a month he would provide her with money for a new apartment and clothes (1181). A date was made, and as Mrs. Lazarus was leaving, he said, "the only thing I have to worry about now is the station wagon" (1181). [On December 4, 1963, he had paid Alpine U-Drive in full for rental on the station wagon the previous October 9th and 10th (1058-9).]

In mid-January, 1964, the defendant visited Messrs. **Odell** and **Newman**, at the auto rental office, seeking bill-

ings for the past six months (835-6, 1060). No complaint about the October 10, 1963, charge was made (836, 1061).

On January 28, 1964, the defendant wrote the following letter to Mr. **Newman**:

> "Gentlemen: As you know, in the last two weeks I have had occasion, for personal reasons, to examine carefully the statements which I received from you for the last six months. As a result, I have come to the conclusion that the charges made for the rental of an automobile on October 10th were not incurred by me, directly or indirectly. My records indicate that on that evening I not only did not rent a car, but had no use for a rental automobile at all. I am sure that this billing to me on your part resulted from inadvertence. However, I feel it necessary at this time to request that the amount which I had previously paid to you for the rental on that date be credited to my account for further use.
>
> "If there is anything in your files, or within your knowledge, which would indicate that someone acquainted with me used my name without authority on that date, I would appreciate it if you would communicate that information to me in writing at my home.
>
> "Unless I hear from you concerning this matter within the next five days, I will assume that you acknowledge the error which I pointed out in this letter and credited me with the amount for this erroneous rental.
>
> "Thanking you for your co-operation.
>
> "Very truly yours,
>
> "(signed) 'Mark Fein'." (1063-4)

During a subsequent telephone conversation,

> "Mr. Fein said he did not take the car out on October 10th in the evening, and said that there was a twenty-one dollar and some change credit due him, and I said I would give him credit for it, * * *.
>
> "Q. And you gave him credit for it? A. We did" (837).

The defendant never complained about the bill for October 9th (1066).

Meanwhile, Mrs. Lazarus and her husband went to Montreal, Canada, for a month, where he obtained employment as a hairdresser (1182-3). On February 11, 1964, Mrs. Lazarus returned to keep her rendezvous with the defendant (1138). When he did not appear she telephoned him (1182). "[H]e told me that he couldn't meet me because I was * * * too hot; and that he would send somebody from the law firm to speak to me" (1184). Mrs. Lazarus met with Mr. Whelan, the defendant's private investigator, and spoke with him for some 45 minutes, but obtained none of the money the defendant had promised (1184-5, 1378-9).

That evening she spoke once more with the defendant (1185-6).

> "I told him, 'Thank you very much for sending me such bad news in the form of Mr. Whelan.'
>
> "Q. What did he say? A. He said, 'Oh, we'll have to sit down and talk.' And I said, 'I can't talk to you any more, because I can't trust you.' And that's my last conversation I ever had with him" (1186).

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On a date which he fixed as late in January or early February, 1964, Mr. **Broudy** telephoned the defendant.

> "Q. Now, will you tell us what conversation you had at this time with the defendant on the telephone? Keep your voice up. A. I said, 'Gee,' I said, 'Why don't you do something for this girl?' I said, 'She lost everything,' I said, 'her clothes, her apartment.'
>
> "I said, 'She did you a big favor, and so did I.' I said, 'Do something for her.'
>
> "And he said, 'Well, let her contact my attorney.'
>
> "And he said, 'If she don't trust me to have her attorney contact his attorney' " (935-6),
>
> * * *
>
> "Q. Did he say anything else? A. He said, 'We can only hurt each other.' " (p. 936).

Mrs. **Lazarus** left for Canada the day after meeting Mr. Whelan, remained for a week and then returned, telephoning Detective Leman for an appointment, and visiting Mr. Broudy for the night (1186-8). The following day, February 20, the two drove to the Century Moving & Storage Company and Mrs. Lazarus was picked up by Detectives Leman and Gilmore (1187-8, 1514-16). The defendant was arrested that evening (1523, 1526-7).

Two or three hours after meeting the police, Mrs. Lazarus telephoned Mr. **Broudy** (938). Thereafter, he went to the station house, saw her there, and was himself questioned (938-9).

When interrogated by the police during the early hours of February 21, 1964, Mr. **Broudy** denied that the defend-

ant had told him anything (968-9). "I * * * wasn't in a hurry for this man to get arrested, because they would just get to me after him" (970). "I didn't want to hurt the guy" (971).

Similarly, in reply to initial questioning, Mrs. Lazarus said that the defendant told her, when she responded to his call on October 10th, " 'I was sitting, talking with him [the deceased]. And some guy came in, and shot him, and grabbed the envelope, and left' " (1344).

Twice during the months following, Mrs. Lazarus recanted her narration of the defendant's crime (1201-3). The first occurred on June 30, 1964, and was withdrawn the following day; the second was on September 28, 1964, and was withdrawn two days later (1201-3). On each instance the recantation consisted of a denial that she saw a body in the trunk and a denial that the defendant admitted shooting the fatal bullets (1201-3).

Defendant's prior indebtedness

Sometime in 1962, the defendant came to Mr. Tishman and told him "that a friend of his that had some bonds * * * was trying to raise some cash. * * * And would I take them to a bank and see if I could * * * get some money on them" (584-5). This was done and a $17,000 loan was arranged (585). Several months later, the defendant gave Mr. Tishman the money back, and in turn received the bonds (585).

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In April, 1963, a second transaction took place between the two (585). This time Mr. Tishman "asked him if these were really his bonds, because he was paying me a gratuity for taking care of this, or this friend of his; and if they were really his, I didn't want the gratuity. And he [the defendant] said they were * * * his bonds" (585-6). $12,000 was involved, and it was eventually paid back after several three month renewals of the three month bank note (586-7).

There were, in addition, other instances when Mr. Tishman lent the defendant money (586-7). From time to time, Mr. Tishman borrowed cash from the defendant in amounts which he believed did not exceed $500 per occasion (654-5).

In May, 1963, the defendant asked if Mrs. Lazarus,

> "could loan him any money, because he had lost a lot of money—I think on baseball. And I said, well, maybe I could loan him something, a few hundred. And he said, well, that wouldn't help much because he had lost sixty thousand dollars" (1113).
>
> * * *
>
> "I loaned him whatever I could.
>
> * * *
>
> "Q. Well, how much was it? A. About sixteen hundred dollars.
>
> "Q. Was that money of your own? A. It was all my savings that I had [and] * * * I asked several other people if they could help me out and loan me money. And I did borrow from two other people.

"Q. And how much altogether did you collect and give to Mark Fein? A. It was close to three thousand dollars" (1114).

For several months during the summer of 1963, the defendant "didn't have much money", and when, in September, he finally finished paying Mrs. Lazarus back, about two thousand dollars passed hands, some of which related to the May loan (1123-4). This meeting occurred between 4:00 and 5:30 p.m. on a day she designated as Yom Kippur ("he had to be home by sundown"); it was the last time Mrs. Lazarus saw the defendant prior to October 10th, the day the murder was committed (1402-4, 1433).

Defendant's statements to the police

On October 15, 1963, Detective **Eugene O'Neill** spoke with the defendant at his Park Avenue office (433). Although he admitted knowing the deceased, "I get theater tickets and football tickets from him," the defendant denied having met with him on October 10th, or being aware that the deceased was a bookmaker (433-4).

On October 21, the defendant met with officer O'Neill at the squad house, accompanied by counsel (435).

"Mark Fein said he would like to make a statement at this time.

"He said, from a telephone conversation with Ruby Markowitz, they planned on meeting on October—this conversation—telephone conversation—took place on October 9th, the Wednesday night. They had planned to meet at First Avenue, in the Sixties.

"Mr. Fein says, 'I went to First Avenue, somewheres in the Sixties,—

"Q. Did he tell you what date he went? A. On October—This was October 10th,—

"Q. Go ahead. A. —at about 3:30 or 3:35—3:45 p.m. He saw Ruby sitting in a car, stopped at a pump, at a gas station. He said, 'I was unable to get into the front seat of the car, so I got into the rear. In the rear was a man sitting.

"I asked him to describe this man. He said the man was a male, white, about 45 years of age, a dark complexion, a heavy beard, wearing a gray suit, a Fedora, and possibly Italian" (435-6).

* * *

"Mr. Fein then said, 'Ruby pulled down off the gas station, and stopped the car. I then got out of the rear seat and sat in the front. I gave Ruby $23,890 [*sic*]. Ruby gave me fourteen Giant football tickets, in an envelope. I said goodby, and walked away from the car.'

"Q. Now, when the defendant told you this, did you then say anything to the defendant? A. I did. I said to him, 'This isn't the same story you gave me in your office.' Fein replied, 'I just didn't want to get involved' " (437).

Upon questioning, the defendant said "that he would contact Ruby Markowitz [the deceased] by calling an answering service. He could ask for Mr. Winnick, and tell him that Mr. Shore called" (442). He added that he "had met Bill Tishman on October 11th in the morning and told him that he had taken care of the gambling debt" (442-3).

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On December 27, 1963, Detective **James Leman**, and four brother officers, met with the defendant, his private investigator and two attorneys at the latters' office (1477, 1489).

"* * * the defendant stated that on October 10th he had been in Yonkers, [at the Red Devil Paint Company also known as the Technicolor Paint Company] prior to the meeting with the deceased, Rubin Markowitz. And as a result of a telephone conversation with the deceased on October 9th, he had told the deceased that he would be traveling down the East River Drive, and that when he wanted to pay him the money he would meet him somewhere on the east side, and asked the deceased to pick out a spot" (1491).

* * *

"He conducted his business * * * [and left Yonkers] * * * between 2:30 and 3:00 p.m." (1492).

* * *

"He stated, when he arrived at this gas station [at 62nd Street and First Avenue] he seen the deceased's car parked at a gasoline pump" (1492).

* * *

"[A]fter the deceased pulled away from the gas pump he got into the front seat alongside of the deceased, Rubin Markowitz. And Rubin Markowitz pulled his car into 62nd Street, east-bound, between York and First Avenue. And about in the middle of the block, Rubin Markowitz pulled his car over to the side. He stated to Mark Fein, 'It's all right', whereupon he pulled out an envelope containing $23,690.

"Q. Who pulled out an envelope? A. The defendant Mark Fein.

"Q. Go ahead. A. —handed it to the deceased. Whereupon he handed him fourteen football tickets for the New York Giants game.

"Q. You say he said the deceased then handed him, Mark Fein, fourteen football tickets for the New York Giants game? A. Yes.

"Q. What else did he say? A. He was asked what was done with his car when he pulled up to the gas station. He said he double-parked it on First Avenue. He said then he went to his car and he went to Brooklyn. He was asked to where, and he said to the Lambert Container Company in Long Island City" (1493-4).

* * *

"A. He was asked how long this took. He said just a few moments, and it was now ten minutes to four" (1494).

* * *

"* * * he spoke to a Mr. Dick Lambert, or to a plant superintendent by the name of Don Dunphy.

"He was asked what he done next. He stated he conducted his business there, and then he went home. He was asked what time he arrived home, and he stated about 7:00 p.m. that evening" (1495).

[Neither Mr. **Lambert** nor Mr. **Dunphy** had any recollection "one way or the other" if the defendant was at their plant on that date (1616-27).]

The defendant gave his code name, for his gambling activities with the deceased, as "Shore" (1495). When asked where he had obtained the $23,690,

"At this point the defendant leaned back in his chair. And he got up and he left the conference room,

with his attorney, Albert Blinder. And then he stayed outside for a period of about five or ten minutes'' (1496).

Upon returning he stated that he got $12,000 the previous April on a loan he obtained through Billy Tishman after putting up $13,000 to $15,000 worth of bonds as collateral; $5,000 on a World Series bet through a bookie named Richie; $2,500 from Billy Tishman on October 9th; ''And the rest he got here and there; he borrowed here and there'' (1496-7). [**Richard Becker**, ''Richie'', testified that the defendant stopped betting with him during the summer of 1963 (1748, 1752). There were no world series wagers placed by the defendant and thus no money given him by Richie, who neither saw nor spoke to the defendant in September and October of that year (1758-9).]

The defendant told Detective **Leman** that Billy Tishman was ''paying this loan off'' that he received on the bonds, and that he (the defendant) received an I.O.U. from him for this April transaction; no I.O.U. was obtained, however, to cover the October loan of $12,000 (1499, 1650-1). He denied being in debt to ''Shylocks,'' knowing a man named ''William Weissman,'' or having any relative by that name in apartment 5-B (1500-1).

> ''And I asked him 'Why would William Weissman be listed as an employee of the Fein Industries as an engineer?' And that 'your name appears as being an uncle of this William Weissman.' At this point, the defendant got up from his chair again and left the room [with his attorney]'' (1501).

Fifteen to twenty minutes later the defendant returned (1501).

> "He stated that actually William Weissman was a fictitious name; and that actually it was a hooker that he knew, by the name of Margaret Foster" (1501).
>
> * * *
>
> "I asked him how this telephone came about. And he said that one day, going—in the month of September, he had been in the building on other business—
>
> "Q. What building? A. 406 East 63rd Street.
>
> "Q. Yes? A. And this Margaret Foster approached him in the building and asked him if she could use his name to obtain a telephone; obtaining a telephone was difficult for her.
>
> "Q. And what apartment was this phone to be for? A. This was for apartment 5-B.
>
> "Q. Go ahead. What else did he say? A. He stated that he done that. He gave her permission to use his name" (1502).

The defendant, however, disclaimed any physical or financial association with apartment 5-B (1502-3). Nor did he know a Gloria Kendal (1511).

> "I then told him that Detective Lyons and myself had been to the answering service of the deceased, and that 'you have already answered the question that you are Mr. Shore'. And that on September 27th, according to the deceased's answering service, and a message received there, a Mr. Shore called the deceased's answering service and left a number, TE 8-6171, which is the apartment 5-B and the phone."
>
> "Q. That was the telephone number for apartment 5-B? A. Yes. And the defendant stated that Billy

Tishman was also known as 'Mr. Shore'; and that as far as that apartment goes, that's his [Mr. Tishman's] apartment, and that was his broad, his girl; he had nothing to do with that apartment" (1504).

* * *

"He was shown a typewritten report where a Mr. Shore had called the deceased's answering service on September the 16th, I believe it was, and left a message there, to have the deceased call him at UN 1-4182" (1511).

"Q. What number was that listed? A. That was listed for 125 East 73rd Street.

"Q. Under whose name? A. Under the name of George [*sic*] Kendal.

"Q. Yes. What did the defendant say when you asked him? A. Well, the defendant said that Billy Tishman was Mr. Shore, and that [I should] ask Tishman about that" (1511).

Detective Leman also told of ascertaining the defendant's possession, on October 9, of a brown Chevrolet station wagon, bearing a license plate number, the last digits of which were "922" (1505-6). The defendant withheld replying for five or ten minutes, while he withdrew from the room with his attorney (1506). Upon returning, he said the only car it may have been was his brother-in-law's (1506). Upon being shown that that was unlikely, the defendant said he would "check his records; he doesn't know what car it was" (1506-7). Because he believed him unavailable, he declined to telephone his brother-in-law (1507).

[922 were the final three digits of the license plate registered to the brown Chevrolet station wagon rented by the

defendant on October 9 and 10, 1963 (1520). Company records showed that the vehicle was driven 12 miles on the first occasion, 33 miles on the second (1052, 1058)].

The defendant denied shooting the deceased, having him shot, or knowing who did it (1509).

Additional police investigation

After conversations with Mr. Tishman, Mr. Odell of the Alpine U-Drive Company, and people at a garage on 39th Street and Park Avenue, Detective **Leman** drove his car, in early March, past given, east side, mid-town points to 125th Street and Third Avenue, and back again (1548-9). The speedometer registered 12.1 miles (1549).

On March 21, 1964, Detective Leman, with Miss Boxer, Mrs. Lazarus and Mr. Broudy, drove from the Alpine U-Drive on 78th Street to the site of the murder at 63rd Street and then followed the path traced on the evening of October 10, 1963 (1546-8). The speedometer registered 32 miles (1548).

When the police searched apartment 5-B, they removed two floor boards from the living room (Exh. 91; 1538). These boards were microscopically examined by Detective **Kevin P. O'Brien** at the laboratory and three metallic fragments were found, two of which were shown to contain lead; the third was too small to be susceptible to chemical analysis (1724-5).

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A chair that had been in the murder apartment on October 10, 1963, and subsequently placed in storage by Mrs. Lazarus, was also chemically analyzed. Several stains on the front part of the seat were tested, first by a police technician, Detective **Paschal Ungarino**, and then by **Eve Gordon**, a serologist in the employ of the Chief Medical Examiner of the City of New York (1702-3, 1710-12, 1716-18). Human blood was present, but not enough stain was available to discern the type (1719-20).

The Defense

To understand the first two witnesses appearing for the defense, it is necessary to know that during the cross-examination of Earl Roper (the prosecution witness who testified that as an employee of the Alpine U-Drive he gave the defendant a station wagon on October 10, 1963, between 6:30 and 6:40 p.m.), it was brought out that at about 11:15 a.m. on October 16, 1964, Mr. Roper delivered an automobile to Mr. Irving Fein, the defendant's father, at 79th Street and Madison Avenue (1008, 1010, 1012, 1015-16, 1085-6, 1097). Although he did not speak to him, the witness was certain that the defendant was with his father at that time (1096-7).

Roger T. Twitchell, sales and advertising manager of the Heisler Machine & Tool Company in Caldwell, New Jersey, met with the defendant and two associates at the witness' office on October 16, 1964 (1771-5). The defendant signed the visitors' book at 9:30 a.m. and remained with Mr. Twitchell until about 1:40 p.m. (1775-8).

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Pursuant to previous arrangements, **Marvin Schere** met with the defendant's father at 76th Street and Madison Avenue, just before 11:00 a.m. on October 16, 1964 (1781, 1783). The two men, and the defendant's wife, walked to a double-parked car three blocks to the north (1784-5). Mr. Irving Fein approached the driver of that car and conducted a brief transaction with him, consummated by the driver departing and Mr. Schere taking his place behind the wheel (1786). Mr. Schere, who "bore a resemblance" to the defendant, noticed the driver staring at him (1787, 1792). Mr. Schere did not obtain a station wagon from the Alpine U-Drive Corporation on October 10, 1963 (1794).

Mr. **Alvin Nierenberg**, an attorney who assisted defendant's counsel during the December 27, 1963, conference that took place between the defendant and the police, testified that when the interrogation turned to the defendant's explanation of the $12,000 loan borrowed with the assistance of Mr. Tishman, the defendant's attorney, Mr. Blinder, "said that he wanted to speak about the tax consequences of this, and this is when he said he would leave the room for a moment" (1796-7, 1799, 1803-5).

Mr. Nierenberg recalled the defendant again stepping out of the room with Mr. Blinder when queried about the name "Weissman" (1806). On return, Mr. Blinder announced that because the defendant was a married man "anything said at this point would be off the record" (1806). The police agreed to be as discreet as possible but said they "could not keep it off the record" (1806).

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> "They then asked Mark Fein what Weissman meant, and he said it was a fictitious name. They asked him to explain the name. He said the girl used it. He was asked if [she] was a hooker, and Mark said [she] was. They asked him if he rented the apartment for her, and he said no. They asked him if he allowed his name to be used as a reference for a telephone, and he said he did. They asked him if he furnished the apartment, and he said no. He said, 'Ask Billy Tishman. Tishman furnished the apartment. It's Billy Tishman's apartment and Tishman has the key' " (1807-8).

The defendant denied leasing, furnishing, having the key to, and paying the rent for, apartment 5-B (1818). Further, he claimed no knowledge of rental agent Donald Galka or a Gloria Kendal (1822, 1831).

Mr. Nierenberg, who arrived after the conference had begun, observed that the questioners interrupted one another, often while the defendant was in the process of answering; he said it was noisy and "there were a few heated words a few times" (1801-2, 1808-9).

Mr. Nierenberg remembered the defendant describing a $5,000 "hedge" bet on the World Series, adding that when asked " 'Did you bet with Richie?' Mark Fein said, 'I don't know. It could be. I just don't know. I would have to check the records' " (1813-14).

When the defendant was asked about a car he had used on October 9, 1963, bearing a license plate number ending 922,

"He stated he owned a white car, I believe it was a Cadillac. I am not sure. And that he had some trouble with the car, and therefore he used a different car. He stated he believed it was—he knows it was a station wagon. He believed it might have been his brother-in-law's, and he was very adamant about taking [*sic*] the color. He said it was either red, maroon or brown. And he said he would have to check his records to see which car it was.

"But he knew it was a station wagon, and he believed it was a red one, to the best of his recollection. And that was when there were questions thrown by Leman and questions by Lyons regarding the car.

"I don't know which officer was specific in their questions, but they asked him if—they told him, in fact, that his brother-in-law does not own this type of car.

"He said he doesn't know—he is not sure. But he knows he drove a station wagon that day, and he believed it to be red, maroon or brown.

"And this created an argument" (1833-4).

The defendant turned down the suggestion that he call his brother-in-law; "he didn't think he was available" (1836).

Albert A. Blinder, Esq., retained as counsel on the evening of November 8, 1963, testified to having met Mrs. Lazarus, with the defendant, at 2:45 p.m. on December 27, 1963, at the witness' office (1843, 1845-6). She was introduced as Gloria Kendal (1862). In a fifteen minute interview, Mrs. Lazarus told him of meeting with the police the week before, narrating on the subjects covered: the apartment of 406 East 63rd Street, the source of its furniture, Margaret Foster, the defendant, Mr. Shore, and

the need for silence regarding the police interrogation (1850-2). Mr. Blinder denied speaking to Mrs. Lazarus alone, and characterized Mr. Nierenberg's testimony to the contrary (1838-41) as error (1866-7).

Later that day Mr. Blinder held the previously described conference with the police at his office (1852). He recalled that the defendant had informed the police that the deceased was paid with (in addition to the April loan raised through Tishman ($12,000), the loan borrowed from Tishman ($2,500) and the hedge bet ($5,000)), money that "he had in the house" (1854). He recalled that the defendant said "It might have been [Richie]" with whom he placed the hedge bet (1871).

Mr. Blinder was unaware, at the time of the conference, that Gloria Kendal and Margaret Foster were one and the same (1859-60). Unlike Mr. Nierenberg, he did not remember the police questioning the defendant about Gloria Kendal (1863). Similarly, unlike his associate (1829), he did not remember the defendant indicating the existence of a personal relationship between Margaret Foster and Mr. Tishman (1876-7).

William J. Whelan, retired New York City Police Detective, First Grade, met and conversed with Mrs. Lazarus, over three drinks, at a mid-town Manhattan hotel on the evening of February 11, 1964, in his capacity as a private investigator for the defendant (1883-7, 1893).

> "She asked me if I had a love letter. I says, 'no, what do you mean by a love letter?' She said, 'Money'" (1888).

* * *

Continuing, Mrs. Lazarus informed Mr. Whelan that she had " 'told Mark that I had to leave all my clothes in the apartment. I can't contact any of my friends and I can't make any money.'

"So I said—I said, 'Why don't you get a lawyer? Go to the police and vindicate yourself.'

"So then she said, 'Well, I will get in touch with Mark Tuesday or Thursday or next week—Tuesday or Thursday of next week.'

" 'But, look,' she said, 'it is true that I have people close to me that have committed crimes of violence, but they paid for their acts. But if it ever comes down to a showdown, I am going to protect the ones that are dearest to me, not Mark Fein' " (1890-1).

Although equipped with an electronic recording device, the resulting tape "was incomplete and quite noisy" (1894-5).

A D.D.S. (Detective Division Form) made out by Sergeant **Ralph Serpico** was introduced into evidence (Exh. B, 1895-6, 1898). The report covered an interview by Officer Serpico with four friends and relatives of deceased on October 11, 1963; no notes were taken and the document had not been filled out until a month later (1897, 1901). In pertinent part, it reads:

" '2. Interrogation of the men revealed that they thought Rubin Markowitz had met with foul play due to his gambling losses and his owing of large amounts of money to unknown shylocks. Louis Markowitz stated that he thought Rubin perhaps was in the trunk of the deceased [*sic*]. No evidence of any foul play at this time and the auto was driven away by one of the men" (1899-1900).

It was not until he read it in the newspaper that the witness learned that the deceased was a bookmaker and not just a heavy bettor (1901-2).

Detective **Bernard Rosen** was first assigned to the case when the body of the deceased was found on November 8, 1963 (1903-4). On November 14, 1963, he interviewed Mr. Tishman (1905). He recalled that Mr. Tishman admitted betting with the deceased, but, in spite of express language in a report he made at the time, had no recollection that Mr. Tishman nominated Bill Markowitz as the man who introduced him (Mr. Tishman) to the deceased (1907-9). During cross-examination, the report of a conversation between the witness and Mr. Josephy was introduced (Exh. 27; 1911). The summary of the interview, which took place on the evening of October 11, 1963, records,

> "Subject did state that he did employ Ruby Markowitz as a grocery clerk and he did believe that he was engaged in bookmaking. He also did state that Ruby Markowitz was very prompt on appointments, and he did not believe that he was into Shylocks. Also when the deceased needed money, he would come to him."

Nancy Fein, the defendant's wife, lived with her husband, three children and two in help, in a $65,000 Park Avenue co-operative apartment (1913-16). In 1940 she inherited a "substantial sum of money" and "substantial amounts of securities" from her father's estate (1930). From time to time she lent the defendant securities, but never any money for a gambling debt (1930, 1947). On

occasion the defendant, of whose gambling activities she was generally aware, purchased securities in her name (1930, 1947-8).

On September 28, 1963, the Day of Atonement, she and the defendant were together, spending parts of the day, including the late afternoon, in synagogue (1926-8). She observed that by tradition Yom Kippur commenced at sundown of the previous day (1944).

Mrs. Fein noted that her children were usually fed between 6:00 and 6:30 p.m. and that the defendant had come home on October 9, 1963 while they were eating (1920, 1922). "It's his custom to come home at that time" (1932). She also recalled that her children were eating dinner the following night when the defendant came home (1922). "He's usually home for dinner, and he comes in and sees the children almost every evening when they are eating, unless something causes him to be out" (1932). She had no independent recollection when he came home on October 11th or 12th (1932-3).

At about 7:00 p.m. on October 10th, Bill Markowitz telephoned; the defendant then showering, she advised the caller to try again in fifteen minutes (1918-21).

At about 8:30 p.m. the defendant and his wife went to keep a dinner engagement which she had made, unbeknownst to him, earlier in the evening (1939).

On October 16, 1964, she met with her father-in-law and Mr. Schere and the three of them walked to an auto-

mobile parked at 79th Street and Madison Avenue (1924). She recalled that the driver, Mr. Roper, got out of the car after they arrived (1924, 1936).

The Post-Trial Testimony

Dagmar Finch Generazio testified that between 3:00 and 4:00 p.m. on October 10, 1963, while at Gail Weiner's apartment she received a telephone call from Mrs. Lazarus (2547, 2550).

> "She asked me for a car. She asked me whether I could get her a car. I said, 'No, I can't.'
>
> "She said, 'Well, how about Gail's car?'
>
> "I said, 'That's impossible.'
>
> "She again asked me, 'Well, how about anybody's car?'
>
> "I said, 'I can't do it.'
>
> "And she told me that she was nearby, and she had a heavy box to move" (2550-1).

While the witness had received other calls from Mrs. Lazarus, they were always at her own apartment, which was in the same building (2652-3). When asked how she fixed the hour of the call, Mrs. Generazio replied,

> "Well, first of all, when I had the phone in my hand, I was facing the window, and it was light outside. And in October it gets dark fairly early. And also Gail and I had a quarrel over the phone call right after the phone call. And Gail usually leaves about—gets ready to leave about 5:00, 5:30, and this was way before that. And I also recall I had watched television, the Early Show, which starts at 5:00 o'clock. And this call came way before that" (2551-2).

Appendix I

In December, 1963, Dagmar Generazio met Mrs. Lazarus at the latter's apartment (2552-3). Informing the witness that she was leaving for St. Thomas shortly, Mrs. Lazarus said,

> " 'Well if you be my friend, if you stick with me, I'll give you something valuable, just as long as you would stick with me through anything' " (2553).

Dagmar Generazio did not know to what Mrs. Lazarus was referring (2553). The following month, while dining at Mrs. Generazio's, Mrs. Lazarus said,

> "if I would be her friend, if I would stick with her, she would treat me good, she would give me something valuable" (2553).

* * *

> "I told Gloria that whatever she had to give me, whatever she wanted, I didn't know why she wanted to give me something, that I didn't want any part of it" (2554).

Two days later Mrs. Generazio was arrested on a charge of prostitution and released on $175 bail (2554). It was apparently a frame-up (2554). Shortly thereafter she left the country, returning "about five and one half, six months" later (2554-6). She gave birth to a baby on August 25, 1964, and sometime afterwards notified the Probation Department of her return (2556-8). The following day Detectives Leman and Lyons arrived at her New Jersey home and questioned her in her husband's presence about Mrs. Lazarus (2558-60).

The detectives advised Mrs. Generazio that they knew she was telephoned by Mrs. Lazarus at Gail's apartment

(2565-6). She recounted the request for a car because Mrs. Lazarus "had a heavy box to move," and her refusal (2565-6). She told the police the call came between 3:00 and 4:00 p.m.

> "They said it was impossible, because they had a witness who could testify to the fact that this girl was with Gloria, that Gloria had made the call later on."
>
> * * *
>
> "* * * well, I kept insisting that it was three and four. So they dropped the subject, and they said:
>
> "Well, listen, we have a warrant for your arrest on your probation jumping. You know, we can arrest you at any time."
>
> * * *
>
> "They kept telling me to cooperate with them, and that they wouldn't arrest me; they would leave me alone; and that nobody could touch me, just as long as I would cooperate" (2567-8).

The next day an appointment was made to visit the District Attorney's Office (2570). The witness repeated to Assistant District Attorney Dermody the same story (2571-5). The questioning, from 9:00 or 9:30 a.m. to 5:00 or 5:30 p.m., centered on the issue of the telephone call, interspersed with warnings about the probation warrant and the importance of cooperating (2571, 2586). In spite of prompting from the detectives that Mrs. Lazarus sought a "trunk," Mrs. Generazio stuck to the noun "box" (2589).

Following this conference, the detectives and the witness were daily in telephone contact,

"* * * and we discussed the telephone call over the telephone, and especially the time. They kept insisting I was wrong, that it was later on, that it couldn't have been the time that I gave them" (2591-2).

A week later, Mrs. Generazio was brought to the prosecutor's office again (2593-4). Upon her willingness to confront Mrs. Lazarus, the latter was brought before the witness and Mrs. Generazio repeated her account of the telephone call (2594).

"After I had finished, Gloria—Gloria kept interrupting, and she was told to 'shut up', you know, so I could finish.

"After I had finished, Gloria jumps up, grabs the phone, and says, 'I'm not going to listen to this. You're trying to pin this on me. I am not going to say anything or listen to this until I call my lawyer—until I speak to my lawyer.'

"And Mr. Dermody grabbed the phone from her and said, 'Well, listen, we're not going to call anybody.' And he told her to shut up."

* * *

"She was screaming, I'd say, yelling.

"Q. And then she was taken out of the room. A. Yes, sir" (2594-5).

On each visit she was "pressured" and "threatened" with the arrest warrant if she did not change the hour of the call from between 3:00 and 4:00 p.m. to between 6:00 and 7:00 p.m. (2724-2728, 2805). The witness repeatedly "insisted upon that hour," but recalled that on the third visit, which was about a week and a half later, she "started to agree with [the 6:00 to 7:00 version] * * * a little bit" (2599, 2728, 2805).

Appendix I

Mrs. Generazio was taken to the District Attorney's Office a fourth time, with her husband on this occasion (2601-2). This was the day of her trial on the prostitution charge. Detective Leman accompanied the witness to the Criminal Court and, after the trial at which she and her husband testified, she was convicted of the offense (2603, 2605). She received a suspended sentence (2606).

The detectives remained in daily contact with the witness and within ten days Mrs. Generazio once more visited the prosecutor's office (2606-7). She remained 3 to 4 hours (2608).

Other than the five days of her visits, she spoke to the police officers almost every day by telephone, who were attempting to ascertain that the telephone call was received between 6:00 p.m. and 7:00 p.m. on October 10th (2598-9, 2609).

Mrs. Generazio, who came to this country from Germany when she was eight years old, and, but for two return trips totalling less than three years, remained ever since, admitted to having formerly engaged in acts of lesbianism and prostitution (2543-5, 2622-34). On occasion during the second half of 1963, she partook in this activity at Mrs. Lazarus' apartment, "once" putting on a "show" for remuneration with another woman (2636-8, 2640). Although not presently living with her baby and husband, to whom she was married in March, 1963, or May, 1963, the witness noted,

"I never really left him and I never really left my child, either.

"Q. You're not— A. I'm here to rehabilitate myself. I have a job. You're endangering this all. What are you trying to do?

"Q. I'm trying to find out something about you, what makes you tick. That's what I'm trying to find out.

"Mr. Nizer: And I suggest that that is not the district attorney's mission, nor a fair one, nor a just one, in the interests of justice. I appeal to your Honor's discretion to put an end to this kind of an attack, instead of asking her about the truth of what she testified to, affecting the defendant in this case, where this woman has no interest in that matter whatsoever.

"The Court: All right, Counselor.

"Mr. Nizer: Your Honor, it places—May I say one further thing. Excuse me for raising my voice. It places a heavy responsibility on counsel. If that is what happens to a witness who may have some skeleton in her closet, I will not bring in witnesses into a courtroom. I think there ought to be some kind of atmosphere of concern for the protection of innocent people with respect to the testimony they give" (2540, 2547, 2642-4).

On cross-examination, Mrs. Generazio admitted that when she first spoke with Mr. Dermody at the District Attorney's Office, he requested that she recount the events of the day on which Mrs. Lazarus telephoned her; she told of being with Sandra Ede in Mrs. Lazarus' apartment during the afternoon, waiting for a date who never appeared, leaving there at 4:00 p.m., telephoning an air-

line pilot and later going to Gail Weiner's apartment, it being dark out when she arrived and the proprietor of an adjoining dry cleaning establishment preparing to close for the night; she thus fixed the hour as somewhere between 6:00 and 7:00 p.m. (2662, 2667-70, 2679-80, 2682-3, 2686, 2740).

The witness said repeatedly that she was "confused" when she gave this account, for the call came some two weeks after she had moved into Gail's apartment and the day she described to the prosecutor was before her move (2661, 2663, 2666, 2668, 2675). Mr. Generazio added that she informed the prosecutor of her error "the same day. I don't know how long after, but it was after I told you" (2770-1).

When she repeated her story to Gail Weiner (Tracy), at the prosecutor's office, Mrs. Tracy said, "'How can you do this to me?' * * *

"A. And she also said that her mother has heart trouble, she was very sick; she didn't want to get involved in it.

"And then she said that it was not true. It was after she made these statements.

"Q. But she told you it was not true, didn't she, that you never made the phone call or that the phone call never came in her apartment from Gloria Kendal? Didn't she tell you that right to your face? A. Yes. But then she admitted that she did have a phone call, that I received a phone call there.

"Q. Are you testifying that, in your presence, Gail Weiner admitted that you had received a phone call

from Gloria Kendal in her apartment? Is that your testimony? A. Yes, sir, it is" (2704-5).

When shown the defendant's photograph at the prosecutor's office, "I said I was not sure [if I]" knew him; at the hearing Mrs. Generazio was certain that she never saw him before (2688). In discussing the observation in her affidavit, which she herself dictated, of being "quite sure" that the photograph of the deceased represented a man whom she had seen in Mrs. Lazarus' apartment, Mrs. Generazio said that that meant she was "not sure" (2692-4, 2718). "To me it is one and the same answer. I am not sure. It is the same thing" (2697).

Mrs. Generazio, previously convicted of assault in the third degree, described the crime as follows:

> "I ran into this acquaintance of mine, a girl I knew slightly. I had met her about four or five times, and we took a walk.
>
> "The girl went up to a woman and pulled out a pistol. Later on I found out it wasn't loaded. She grabbed the bag which had seven dollars in it and started running. I ran with her" (2758).
>
> • • •
>
> "Q. As a matter of fact, Mrs. Generazio, didn't you turn over the seven dollars to the arresting police officer at the time you were apprehended?" (2758).
>
> • • •
>
> "A. I turned over money from my pocket, my money —nobody else's.

"Q. Didn't you tell the police officer at the time you turned over the seven dollars that this was the money that had been taken from this woman?

* * *

"A. The other girl was harassed by the police also. I couldn't sit there and watch this going on" (2759).

* * *

"The Court: Did you turn over any money to the police officer?

"The Witness: Yes, sir, I turned over money to the police officer" (2760; see pp. following).

Sergeant **Russell Generazio** corroborated, in essential detail, his wife's accounts to the police. Presently a career soldier, he re-enlisted in 1951 after "Having developed a guilt complex of using the G.I. Bill and not really having earned it" (216 B). Sergeant Generazio fixed May 22, 1963, as his marriage date and observed that three months later he and his wife commenced living apart, except for occasional weekend visits; in January, 1964, Mrs. Generazio travelled to Germany returning at the time of their first anniversary (219 B; 2460, 2496-8). A son was born on August 25, 1964, and a month later they contacted the New York City Probation Department (216 B, 2461).

When Detectives Leman and Lyons arrived, they announced they were investigating a murder.

"She said, 'I don't know anything about a murder case.'

"So he said, 'Well, don't you read the papers?'

"My wife said, 'No.' She said, 'I didn't read no papers over there. We don't get no papers from New York.'

"We notified the German police. We wanted to find out where you were. Didn't you get any notification over there?

"My wife didn't know what they were talking about" (2463-4).

Referring to a writ for violation of probation and concomitantly urging Mrs. Generazio to "cooperate", Detective Leman asked if she ever received a call from Gloria Kendal; Mrs. Generazio answered in the affirmative (2465, 2467).

"My wife said it was in early October. He wanted to know what time she got the call, and my wife said it was in the afternoon of October, this particular time. I don't recall the date. However, she did say it was in the afternoon" (2467-8).

* * *

"Gloria Kendal * * * wanted to know if my wife had anybody else who had a car. My wife said, 'No.'

"So the conversation took—the way she told the detectives—this conversation took a very urgent tone. This woman was talking very urgently like she needed it.

"So my wife had asked Gloria—when she told this to the Detective Leman—why she wanted a car. So Gloria said she had a heavy box to move, and then the conversation took another aspect at that time" (2469).

Upon receiving this explanation, the detectives returned to the subject of the arrest warrant, adding

"As long as you help us in this here case, and as long as you tell us what we want to know, well there is no sense in exercising the writ. We will just go along and give you a helping hand too" (2475).

Appendix I

The witness accompanied his wife to the District Attorney's Office, and, although not permitted to be present during the interview, described his wife's distraught appearance after six hours of questioning and her unhappiness at being urged to change her story (2476-80).

Gail Weiner Tracy testified that she had lived at 412 East 64th Street for a year, when Dee, Mrs. Dagmar Generazio, moved in with her (3523, 3527). This occurred "a week or so" before the witness' October 13, 1963, birthday (3523, 3527). Mrs. Generazio received one phone call there during that October; Mrs. Tracy answered the telephone "right after I took my afternoon pills, which I take at 3 o'clock (3594, 3683).

The witness noted that she takes a phelantin pill and a dilantin pill every 9 a.m. and 9 p.m. and a dilantin alone at 3 p.m. (3600-1). In her affidavit she stated she knew the call came shortly after taking her dilantin and phelantin pills at 3 p.m. (468 B).

The caller identified herself as "Gloria" and Mrs. Tracy handed the phone to Mrs. Generazio; Mrs. Generazio was then heard to say, into the phone, "no, no, no" (3573, 3683). After she hung up, Mrs. Tracy asked who had called; Mrs. Generazio said, "nobody" (3583). Mrs. Tracy replied, that she "didn't want any of her friends to call" (3573).

In September, 1964, after speaking to detectives, Mrs. Tracy went to the District Attorney's Office where she said,

"it was impossible for her [Mrs. Generazio] to have ever received a phone call from anybody because she never was at my house then for six or seven months" (3530-1, 3533).

A few days later at the District Attorney's Office Mrs. Tracy was confronted with Mrs. Generazio who then stated that she had a conversation with Mrs. Lazarus by phone at Mrs. Tracy's apartment in October, 1963 (3535-6). Mrs. Tracy did not recall whether the hour of the call was mentioned (3548). Mrs. Tracy "called her a liar and * * * kept insisting that she was a liar" (3538). Mrs. Tracy never altered her story to the prosecutor, always denying the occurrence of a call (3541).

After meeting Mrs. Generazio on a train on October 13, 1964, Mrs. Tracy called the District Attorney's Office telling them that Mrs. Generazio had said, "I'm sorry I did this to you" (3559). She further testified that her reason for calling was because she, Mrs. Tracy, was "afraid" and "[she] wanted him [Mr. Dermody] to believe [her]" (3562). She denied telling the district attorney that Mrs. Generazio had admitted lying (3566).

In February or March, 1965, Mrs. Tracy, accompanied by her attorney, visited the District Attorney's Office where she was shown Mrs. Generazio's pre-hearing affidavit (3567-68). She stated at that time, "after all that I've been through, really I'm not sure anymore about the phone call" (3569).

One of the defendant's attorneys telephoned Mrs. Tracy shortly after midnight on Easter Sunday, April 18, 1965;

at her invitation they visited her some 30 minutes later (3579, 3582-4). Initially, she denied the receipt of a phone call from Mrs. Lazarus but after one to two hours she decided to tell "the truth" (3586, 3592). She "told him it came through right after I took my afternoon pills, which I take at 3 o'clock" (3594). The conference ended sometime after 3:30 a.m. (3603).

On the evening of that same Sunday Mrs. Tracy and her husband went to the office of the defendant's attorney (3607). Mr. Tracy noticed a bulge in one of the lawyer's pockets and, believing it to be caused by a tape recorder, got angry and the two left (3609, 3611).

The next day, Monday, April 19, Mrs. Tracy called the District Attorney's Office and told them that one of the defendant's attorneys "had offered us money to leave town" and advised that if she were out of the state "a subpoena wouldn't mean a damn thing" (3615-18). She added that when she had met Mrs. Generazio on the train, the previous October 13, Mrs. Generazio told her that "she was being bribed" (3558, 3616).

Mrs. Tracy stated that there was no truth to her charges (3620).

When the trial assistant called her later in the day on Monday the 18th, he advised that he was going to subpoena her as a witness at the hearing the following day; she "took her husband's and [her] toothbrush and [she] left the house" (3624, 3628). That same night she and her

husband registered under pseudonyms at a mid-town hotel (3631).

On Tuesday, April 20, Mrs. Tracy telephoned the defendant's lawyers and told him of her conversation with the assistant district attorney (3632-3, 3635-6). The attorney did not ask her where he could reach her, nor did Mrs. Tracy tell him; there was no discussion about any further communications (3636, 3679). On Wednesday, April 21st, the prosecutor told the court in the presence of the defendant of his inability to locate Mrs. Tracy (3514-16). The defense representatives said nothing (3516).

Mrs. Tracy again called the defendant's attorney on Thursday the 22nd and was told that the hearing was over (3638). That afternoon she signed an affidavit for him (3651). At the same time Mrs. Tracy was directed to another attorney for assistance with her own pending action for 102 unpaid traffic tickets, which had apparently been accumulated when she "lent her car out" (3551, 3645, 3649).

Mrs. Tracy owned a Thunderbird in October, 1963, her second; before that she had a "couple of Cadillacs" which were gifts from her father, she herself having no job at that time (3524-5, 3552-5).

The witness was not certain what her husband's job was in September, 1964, but remembered that they were so short of funds that she and her husband-to-be borrowed carfare on leaving the prosecutor's office (3674-7). Mrs. Tracy did not recall where she was living in September,

1964 (3677). She could not recall what hour, the previous day, she met with defense counsel at his office, or if she had met with him at all on Monday, three days earlier (3668-71).

William J. Whelan, presently a private investigator after having served for 35 years as a member of the New York City Police Department, testified that he was employed by the law office of Saxe, Bacon and O'Shea (2908-9). Mr. Blinder, one of defendant's lawyers, was a partner in the firm (2910). Mr. Whelan stated that he was aware of a woman named Dee since sometime during September, 1964; within the month thereafter he learned that her first name was Dagmar and during the trial ascertained that her last name was Finch (2911). He did not know Dagmar Finch's married name, Generazio, until after the trial (2945). He had obtained information that on the day of the murder Mrs. Lazarus had telephoned Dagmar Finch to borrow a car (2914, 2928). He also learned that Dagmar Finch had been down to the District Attorney's Office (2914, 2955). Mr. Whelan gave this information to the defendant's attorney while the trial was still in progress (2917-9).

Upon Mr. Whelan's inquiring if Dagmar Finch was to be called as a witness, Detective Leman answered that "he didn't know" (2918, 2930). When Detective Leman then asked Mr. Whelan if he had called Dagmar Finch's mother in Baltimore the witness replied "I don't know her mother. I don't even know the phone number" (2930). "I asked him for the telephone number, but I didn't expect he would

give it to me. In fact he says, 'I'm not at liberty to give it to you' " (2930). Mr. Whelan stated that he didn't know whether the defendant's attorneys had asked the District Attorney's Office to turn over Dagmar Finch's name and address (2938-9). The witness made no effort to obtain the phone number from any member of the prosecution staff (2948).

Sandra Ede testified that part of her job was to answer Mrs. Lazarus' phone and take messages (3158, 3181). "Around" October 10th, she went there as often as possible, but did not remember whether she was in Mrs. Lazarus' apartment on that particular day (3165, 3167). When asked "do you have any recollection one way or the other of speaking to Geri Boxer on the intercom sometime in October of 1963," she replied, "No, I don't remember speaking to Geri on the intercom" (3156).

> "Q. Do you say that that never happened? A. I say I am not sure. I don't remember" (3157).

Later she averred, "I would never give a message over the intercom" (3229).

At yet another point, the following colloquy occurred:

> "The Court: When Gloria spoke to you on the intercom, didn't you talk to her?
>
> "The Witness: We wouldn't hold a conversation. I mean usually it was just to buzz, the signals of buzzing" (3178).

In a pre-hearing Q. and A. she was asked, "Did Geri Boxer call you at any time on October 10th, 1963 on the

intercom at 125 East 73rd Street apartment?''; she answered, ''positively not'' (183 B). At the hearing she stated, ''It couldn't have been positively not, because I wasn't sure. I meant positively I didn't give any message over the intercom. That's what I meant. In other words, I would never talk over the intercom'' (3225).

Miss Ede also denied ever giving a message to Miss Boxer which directed that Mrs. Lazarus could be found at the ''Weissman'' apartment (3150-1).

In March, 1964, Miss Ede was questioned in the presence of her lawyer by Assistant District Attorney Herman (3168-9). At that time she told him, ''I wouldn't hold a conversation over the intercom. But actually speaking [to] her [Geri Boxer], I don't remember'' (3176). When asked if she received a call from the defendant on October 10, 1963, she replied, ''I don't remember talking to Mark Fein, getting such a message like that'' (3183-4).

> ''Q. When you say 'I don't remember anything like that happening,' does that mean you have no recollection or does it mean it did not happen? A. No, I don't have any recollection of anything like that happening'' (3185).

When advised at the prosecutor's office that she had a phone installed in her Riverdale apartment on October 10, Miss Ede recalled that this occurred in the afternoon because ''[I] couldn't get over there in the morning''; as a result of installation difficulties the installer left ''sometime late in the afternoon. I don't remember exactly''

(3160, 3163). The witness had no independent recollection of the phone being installed (3162). When asked if she had previously specified the installation time to be between the hours of two and five, she replied, "Maybe, I did" (3164).

> "Q. Well, was that correct? A. Well, sometime in the afternoon" (3164).
>
> "* * * I didn't see how I could get from Riverdale to Gloria's apartment because I wasn't familiar with the transportation service" (3164).

She was not sure if the installation was 2:00 p.m. or 5:00 p.m. (3183). She did not deny that she was present in Mrs. Lazarus' apartment in the late afternoon of October 10, 1963 (3164-6, 3190).

On her second visit to the District Attorney's Office, again accompanied by her lawyer, Miss Ede was confronted by Miss Boxer's account of "three different stories" of how she received the message (on the phone, on the intercom, and handed on a piece of paper) (3198-99, 3201). Miss Ede told Miss Boxer, " 'I don't remember any of these things, you know but I don't want to call you a liar.' I said I don't know" (3198-9, 3201-2).

On her third visit to the District Attorney's Office on October 29, 1964 Miss Ede saw Mr. Herman again and repeatedly said "that I didn't remember" (3208-9).

In November, 1963, Miss Ede was in an automobile accident and as a result "was upset straight along. I just wasn't feeling good" (3153, 3172). She was admitted to

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Bronx Municipal Hospital on November 24, 1964 (the day after the defense summed up at the trial), for psychiatric care and remained so confined until February, 1965 (1956, 3154, 3212-13). When asked by defendant's attorney "Did they [District Attorney] tell you that they would take you to a Grand Jury if you don't make a statement?" she replied, "Yes, but so did you" (3151-2). Some two months after being hospitalized she was told by her doctor that the defense wished to question her (3212). Upon his advice she gave a stenographic statement to the defendant's attorney, "I just was scared of the subpoena" (3220-1, 3224).

Mrs. **Yvonne Bennett** testified that since July, 1963, she lived in a back apartment at 406 East 63rd Street (2822-3). The defendant's apartment faced the front of that building, on the fifth floor (2827). Speaking of herself, her mother, and her young daughter, the witness recalled,

> "[w]e had, more or less, the same schedule every day, and if the weather permitted, we would do the same thing every day, go to the park with my little girl up until 4:00 we arrive home. That would be our timing. And we had arrived home, sometime—it was Indian summer, I remember—and I was telling her the story of Snow White after, you know, we had washed her up.
>
> "I happened to be looking in the mirror. I was saying, 'Mirror, Mirror, on the wall', when all of a sudden, to the right of me, I heard a series of shots. I turned to my mother and said, 'Mom, those were shots,' because where we used to live there was a de-

> tective that lived next door or something—familiar with shots. But anyone would know shots because they are different, sharp'' (2828-29).

When asked if she could fix the date in the latter part of September Mrs. Bennett replied, ''I don't remember'' * * * Well, everyone places it in October the 10th, so I read [in] the papers'' (2862-3). The shots appeared to come from the garden in the rear of the building (2829). Without specifying when, Mrs. Bennett also recalled seeing a black trunk on two separate occasions in the lobby, ''once on the left side as you enter the elevator and then on the other side the following day'' (2833-4, 2855). The witness remembered the trunk was solid black; her affidavit trimmed it with ''gold or brass'' (2852, 2854).

> ''I may have gone along with mother and said, 'Yes, it was a gold trim,' because I'm not that detailed, really'' (2854).

''Sort of in the middlish'' of February, 1964, when questioned by Detectives Leman and Lyons, Mrs. Bennett told of hearing shots in the rear of her apartment and seeing a trunk; they advised ''please don't talk about this to anyone'' and specifically, ''don't mention it to Mr. Kassow'' (2831-3, 2866, 2892-3). At that time she was aware of the defendant's arrest for a shooting that occurred in her building (2868, 2878). In her affidavit Mrs. Bennett mentioned only one visit from the police, ''sometime in the summer of 1964'' (245 B). She explained that this referred to another visit, ''I would say around Mayish, they came back the second time'' (2867).

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Despite the admonition from the detectives in February, Mrs. Bennett told Mr. Kassow, a social friend and defendant's attorney of record, about the trunk, but not about the shots (2868, 2894). Realizing that she had been warned by the detectives not to speak to anyone, the witness explained how she happened to tell Mr. Kassow about the trunk.

> "We were having dinner, and it was brought up. Actually, I'm also afraid of him. I'm afraid of any man I go out with. I'm very shy or quiet and I'm not about to discuss things like that with him, you know —it's not my type of person. We really didn't—We discussed, you know—the weather, and we discussed theater and things like this. And when he did bring it up, I said, 'Well, yes, the trunk.' And I kept quiet about the shots" (2889-90).

In September, 1964, the witness informed Assistant District Attorney Dermody, while at his office, that she had mentioned the trunk to Mr. Kassow; she did not tell the trial assistant that she had talked about the shots (2837, 2841, 2888-9). She denied ever telling the detectives or the trial assistant that the shots came from upstairs and towards the front of the building (2879-81).

Mrs. **Vera McNair** lived with her daughter, Mrs. Yvonne Bennett, and her four and one-half-year-old granddaughter, during the summer and fall of 1963 (3071-3). The witness stated that she heard "four fast shots" on a day that "seemed like it was Thursday or toward the end of the week" (3083, 3126). "[I]t could have been the beginning of October" (3085). When asked if it could

have been the end of September when she heard the shots she replied, "No, I don't think so, because the weather, it was favorable and then it started getting chilly, started getting very chilly" (3086). "September was very nice, but in October starts getting very chilly. That's how I recall" (3086).

The witness stated that the shots "came from down below, and toward the alleyway," that she had "immediately" gone to the window, but did not see anything (3091-92). She knew they were shots because

> "We used to live next door to a man connected with the Police Department, and we were sitting in our living room and we heard, once or twice, a big blast from a gun.
>
> "Q. A big blast from a gun, you heard? A. Yes, because I guess he was in the basement of his house.
>
> "Q. You guess? A. Well, I wouldn't go and ask the man if it was, and it would not have been anything else. It was a gun blast. It couldn't be no explosion.
>
> "Q. Well, did you see this detective actually firing the gun? A. No, I didn't.
>
> "Q. You heard some loud sounds. A. Yes, yes.
>
> "Q. That, in your opinion, were shots. A. Yes.
>
> "Q. Is that right? A. Yes.
>
> "Q. Had you ever heard in your lifetime the sounds of a backfire? A. Oh, yes.
>
> "Q. Firecrackers? A. Oh, yes.
>
> "Q. You say this was not the kind of sounds you heard. A. Oh, no, no. It's a different sound" (3127-8).

No effort was made by her to notify the superintendent of the building or the police; "we thought if we looked

and then it wasn't our concern in a way—we wouldn't know where it came from" (3095).

The witness remembers seeing "a very large," "shiny and new" black trunk, which "may have had gold trimming on it" at the end of September or the beginning of October, but could not recall whether it was before or after she heard the series of shots (3096, 3098-9).

In February, 1964, detectives visited the witness at her apartment; when she told of the shots and the trunk, they advised "don't talk to anyone" (3129). Mrs. McNair was visited again by detectives in May (3111). Her affidavit also referred to only one visit by the police, "sometime in the summer of 1964" (3110).

In the course of the May visit the witness heard her daughter mention that she knew Mr. Kassow (3119-20). She did not hear her daughter inform the police of having told Mr. Kassow about the trunk or the shots, and she never said otherwise to Mr. Dermody (3119-21). Nor did she ever tell Mr. Dermody that the shots came from "upstairs and toward the front" (3126).

Saul Kassow testified that until the start of the trial below he was defendant's counsel (2958, 2962). He had seen Mrs. Bennett socially from August or September, 1963 until May, 1964 (2959, 2970). Sometime during the winter of 1964, Mr. Kassow learned that tenants of the building had been questioned by detectives (2971, 2973). Mr. Kassow asked Mrs. Bennett "if she knew anything

about the case; did she see or hear anything around that time, in the beginning of October (2973-4). Mrs. Bennett said she wasn't able to talk to him "because the policemen told me not to talk to anybody."

> "I said, 'Well, did they tell you not to talk to me?'
> "She said 'Yes.'
> "I said, 'How did my name come into the conversation?'
> "Q. What did she say? A. She was very vague" (2977-78).

The witness questioned Mrs. Bennett extensively but "the only information that [he] could get out of her at that time was the fact that she had seen the trunk" (2984). She described the trunk as black, and placed its appearance by her elevator "about the beginning of October" (2981). When he asked her about hearing shots Mrs. Bennett said " 'no,' she hadn't heard anything" (2989).

Albert A. Blinder, one of the trial counselors for defendant, testified that during the trial, he was told "by Mr. Whelan, my investigator, that there was a witness who claimed that she had received a telephone call from [Mrs. Lazarus] to borrow a car" (3003-4). Before the trial was over he knew that the caller, Dee, was Dagmar Finch and that she had been to the District Attorney's Office and had told them of receiving a telephone call from Mrs. Lazarus on October 10, 1963, in an attempt to borrow a car (3018-19). When the prosecution rested at the trial below, Mr. Blinder knew that Dagmar Finch would not be called as a witness; at no time did he ask anyone connected with the prosecution to supply her address so that he could question

her and possibly call her himself (3026-27). Mr. Blinder did not learn of Miss Finch's married name, Mrs. Generazio, until after the trial (3003).

Mr. Blinder knew of Sandra Ede several months prior to trial, and of her importance in the case, but did not interview her even after being given her address (3029-30, 3033, 3045).

Mr. Blinder testified that he was advised by attorney of record Saul Kassow, "sometime within a few weeks after the defendant's arrest, that some young lady he knew socially in the building at 63rd Street had seen a trunk"; the witness did not "recall any conversation about shots with Mr. Kassow" (3010-11, 3028).

Vincent J. Dermody, an assistant district attorney for over twenty years and trial prosecutor in the case at bar, testified that on September 23, 1964, he spoke to Dagmar Generazio in the company of Detectives Leman and Lyons (3342-3). She told him that while at Gail Weiner Tracy's apartment she had received a phone call from Mrs. Lazarus sometime in the latter part of September or early October and placed the time by inquiring "could it have been around 8 or 9 o'clock?" (3344-5, 3352). In an effort to fix the hour more precisely, Mrs. Generazio then traced the events of the day: she recalled going to Mrs. Lazarus' apartment at 2:00 p.m. and waiting in vain until 4:00 p.m. for a man to show up; Sandra was there (3345-6). She left the apartment and spent a couple of hours entertaining an airline pilot (3346-7). Then she went to Gail

Tracy's apartment; the telephone call occurred "sometime after seven o'clock possibly between six and seven; but I am not sure. * * * All I know is that it was dark out, and when I entered the building the dry cleaning man was getting ready to close his store" (3347-9). She never retracted this account of her activities, or claimed confusion (3360).

When the telephone rang, Gail Tracy answered it, and, advising that it was "Gloria", handed the phone to Mrs. Generazio (3348). Mrs. Lazarus asked to borrow a car; Mrs. Generazio replied that she didn't know of any car she could borrow (3348). Mrs. Lazarus asked if she could use Gail's; Mrs. Generazio said that that would be "impossible" (3348). Mrs. Generazio did not recall Mrs. Lazarus telling her why she wanted to borrow a car (3349).

When shown a picture of the deceased she couldn't tell whether she had seen him before (3350). She identified a picture of the defendant as a man named "Mark" whom she had entertained sexually at Mrs. Lazarus' apartment (3350-1). Mrs. Generazio also gave the details of her involvement with "the law" (3351-2).

On a second visit to the District Attorney's Office Mrs. Generazio recalled that Mrs. Lazarus asked to borrow a car in order to move a box (3355). She then confronted Gail Weiner Tracy with her story of receiving a phone call at her house "sometime after or between 6:00 p.m. and 7:00 p.m. (3357). Before she could finish, Mrs. Tracy called her a liar, saying she never received a call on her phone from

Mrs. Lazarus at any time (3357). Mrs. Tracy never retracted this denial (3384). After Mrs. Tracy left the room, Mrs. Generazio said, "I am telling the truth * * * It had to be some time between 6:00 or 7:00, or even possibly later" (3358). Mrs. Generazio never indicated that she received the telephone call between 3:00 p.m. and 4:00 p.m. (3359-60). Throughout she seemed anxious and willing to tell Mr. Dermody what she thought he wanted to hear (3460).

Although Mr. Dermody "pressed" Mrs. Generazio as to the reason she violated her probation and went to Germany, she "assured" him that it had nothing to do with the defendant's case (3355-6).

On her third visit, September 28, 1964, Mrs. Generazio again assured the assistant district attorney that the late September or early October telephone call came between 6:00 p.m. and 7:00 p.m., "or even possibly later" (3360-1, 3499). When confronted with Mrs. Lazarus she repeated her story about the receipt of the phone call from her (2362). Mrs. Lazarus called her "a goddamn liar" and started to shout demanding the opportunity to call her lawyer, which was granted(3362-3). Mrs. Generazio was taken out of the room (3363). Later on the same day, Mrs. Lazarus recanted (3508). That was the last time Mr. Dermody spoke to Mrs. Generazio about the case; he never advised her not to talk to any defense lawyers (3364).

He met Mrs. Generazio on one subsequent occasion in the sixth floor waiting room of the District Attorney's

Office; she was about to meet Detective Leman on a matter not related to the present case (3363-4).

During the trial Mr. Whelan told Detective Leman that the defense knew that Dagmar Finch had been to the prosecutor's office for questioning about receiving a call from Mrs. Lazarus in connection with borrowing a car; Detective Leman so advised Mr. Dermody (3384-5). Mr. Dermody did not, however, know that the defense was trying to locate her (3469-70). Had they inquired of him, he would have given her full name and address (3470).

Mr. Dermody questioned Mrs. McNair in the latter part of September, 1964 (3365). She stated that sometime during "Indian Summer," from the middle of September, to middle of October, "she and her daughter had occasion to see [a new black] trunk in the lobby of her building" (3365-6). During that period she also heard "what sounded like" shots. "It could have been four or five" (3366-7). "They seemed to come from upstairs, towards the front of the building;" she added emphasis by pointing forward and upward (3367). Mrs. McNair told him that she, as well as her daughter, had mentioned the shots and trunk to Mr. Kassow (3368, 3414). Before she left, Mrs. McNair was advised not to gossip with her neighbors (3369). She was never told not to talk to defendant's lawyer (3369).

A few days later the witness saw Mrs. Bennett, who repeated her mother's account, to wit: that "sometime during Indian Summer" she saw a trunk in the building and heard a series of shots that came from upstairs and towards the front of the building (3370). She said that

she had told Mr. Kassow about the shots and trunk (3371). Mr. Kassow had shrugged his shoulders and advised, "Just tell the truth" (3371) She too was informed not to gossip with neighbors, but never directed to avoid talking to the defendant's lawyer about her observations (3371-2).

Mr. Dermody on one occasion spoke with Sandra Ede and her lawyer; it was in September, 1964 (3373). She told of knowing Mrs. Lazarus for several months and of entertaining men and taking phone messages at Mrs. Lazarus' apartment (3373). She had no specific recollection of being in Mrs. Lazarus' apartment on October 10, 1963, nor of talking to the defendant over the phone on that date, nor could she recall one way or the other speaking on the intercom with Geri Boxer on that date (3373-5). She had no recollection that a phone had been installed in her apartment on October 10, 1963, but noted that "if it was on October 10, 1963, and it was installed in the afternoon, I don't see how I could be in [Mrs. Lazarus'] apartment" (3379). When asked what time the phone was installed she replied, "I honestly can't recall. I don't know. I have no recollection one way or the other" (3379).

Upon being confronted by Miss Boxer and her account of receiving a message over the intercom from Miss Ede directing her to go to the Weissman apartment on 64th Street, Miss Ede's attorney asked if Miss Boxer could be mistaken (3376-7). Miss Boxer replied "I know Sandra's voice. I have spoken to her on many occasions. It was Sandra" (3378). At that point Miss Ede said, "Geri, I'm not calling you a liar. I'm not saying this didn't happen.

I just have no recollection. I honestly don't remember" (3378). At no time did Miss Ede advise that she was not in Mrs. Lazarus' apartment on October 10, 1963, that she didn't talk to the defendant on October 10, 1963, or that she didn't speak over the intercom to Geri Boxer (3380-1).

Detective **James Leman** testified that on September 28, 1964, he and another officer visited Dagmar Finch Generazio at her New Jersey home (2298-9). In the presence of her husband, Mrs. Generazio advised that Gloria Kendal (Mrs. Lazarus) had telephoned seeking to borrow her car, and failing that, the use of the car belonging to her then roommate, Gail Weiner Tracy (2300-2, 2370). Both of Mrs. Lazarus' requests were refused (2302).

Mrs. Generazio was unable to fix the exact date of the call, placing it "near the end of the summer or the beginning of the fall", 1963 (2302-4). It occurred when "She was just starting to move in [to Gail's] * * * apartment" (2370-1). When shown a photograph of the deceased, she denied recognition (2306-7).

A few days after this visit, Mrs. Generazio in conversation with Detective Leman advised that Mrs. Lazarus had wanted "the car to move a box" (2374, 2376). During two subsequent interviews at the District Attorney's Office (she came to the building on two or three other occasions for other purposes), Mrs. Generazio alternately fixed the hour of the call "Maybe it was eight o'clock or nine o'clock," and, "after six and close to seven p.m." (2315-16, 2372, 2431).

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When Mrs. Generazio repeated her story to Mrs. Lazarus at the prosecutor's office, the latter denied it, became very angry and commenced screaming (2326, 2330). She was directed to calm down and permitted to call her lawyer (2326-8). Thereafter, both Detective Leman and Mrs. Generazio left the office (2328).

On a different occasion, Mrs. Generazio met Gail Weiner Tracy at the prosecutor's office; Mrs. Generazio's account of the call made her "very excited" (2378-80).

At no time did Mrs. Generazio ever fix the hour of the telephone call as occurring between 3:00 and 4:00 p.m. (2372). Although advised to keep in touch with the prosecution if anyone from the defense contacted her, Mrs. Generazio was not told she must not talk to such representative (2322-3). During October, 1964, the witness called Mrs. Generazio "about five times" always from the prosecutor's office; she, at his request, called him on an equal number of occasions (2320-1, 2349). The telephone records of the District Attorney's Office, subpoenaed by the defense, showed five calls to Mrs. Generazio between September 22, and November 30, 1964 (2746-9).

Detective Leman testified that he spoke to Sandra Ede on five different occasions (2399-2400).

The first visit, in January, 1964, consisted of a fifteen minute conversation in the detective's automobile (2354, 2401).

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In March, 1964, the witness and Mrs. Lazarus met Miss Ede in a restaurant near her home to try and refresh her memory as to the events of October 10, 1963 (2355, 2401-2). At that time Miss Ede could not remember one way or the other about being in Mrs. Lazarus' apartment on October 10, 1963 (2401).

Detective Leman's June visit to Miss Ede, at her newsstand at the Chatham Hotel, was fruitless; she refused to talk to him (2354, 2403-4).

In August, 1964, the witness spoke with Miss Ede and her lawyer in Mr. Dermody's office (2404-5). Miss Ede stated that she answered phones and worked as a prostitute for Mrs. Lazarus; she also knew the defendant (2405-6). She could not remember the defendant telephoning on October 10, as she received many calls from him (2410). She also did not recall giving a message to Geri Boxer over the intercom, because "they gave a lot of messages to people over the intercom" (2411). She did not remember the name Weissman (2423).

In reference to her being advised that a telephone was installed at her Riverdale apartment on October 10, Detective Leman testified, "she said that she had been thinking about this, and if it was the day her phone was installed, she thinks it was in the afternoon. And if it was installed in the afternoon, she wouldn't have been in Gloria's apartment to receive this call" (2359, 2413).

On October 29, 1964, Miss Ede, again accompanied by her lawyer, was questioned by Assistant District Attorney

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Herman in Detective Leman's presence (2400, 2415-16). At that time Miss Ede could not remember "one way or the other" being in Mrs. Lazarus' apartment on October 10, 1963 (2417-18). She never denied giving a message to Miss Boxer, nor being left such a message by Mrs. Lazarus (2419). "She just could not remember" (2419).

Detective Leman visited Mrs. McNair and Mrs. Bennett on three different occasions: December, 1963, March, 1964, and August, 1964 (2333-4).

On his December visit, the witness, accompanied by Detective Gilmore, asked the two women "Did anything unusual happen in the month of October?"; they answered, "No" (2335, 2383-4). Neither of them mentioned seeing a trunk or hearing shots (2386). The visit took five to ten minutes (2439).

The witness revisited Mrs. McNair and Mrs. Bennett the following March (2386). They told of seeing a trunk in the lower hallway for some 24 hours and of hearing a series of gun shots "about five, five-thirty" p.m. during the month of October (2344, 2387). After hearing the shots they looked out the window and also looked out the door leading into the hall (2391). When asked what direction the shots came from, "they both pointed towards the front of the building and up" (2388). Mrs. McNair and Mrs. Bennett added that they had told Mr. Kassow about the shots and the trunk (2393).

Detective Leman advised the women not to discuss the case with others (2349-50).

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Assistant District Attorney Dermody interviewed Mrs. Bennett in Detective Leman's presence; she repeated that "the shots seemed to come from upstairs and towards the front of the building" (2395). She told of advising Mr. Kassow about hearing the shots and seeing the trunk (2395). Neither of the women ever claimed that the shots came from any other direction (2397-8).

Alexander Herman, an assistant district attorney for twenty-seven years and presently in charge of the Homicide Bureau, testified that he spoke to Sandra Ede and her attorney in March, 1964 (3277-8). Miss Ede, a prostitute, assisted Mrs. Lazarus by answering the telephone and taking messages at Mrs. Lazarus' apartment, commencing "regularly" at 4:00 p.m. (3279-80). Miss Ede had no recollection of speaking to the defendant on the telephone at Mrs. Lazarus' apartment nor had she any recollection "one way or the other" of speaking to Geri Boxer over the intercom on October 10, 1963 (3281-2). Advised that her own telephone was installed on October 10, Miss Ede did not recall during which part of the day this had occurred; she observed that if the installation were in the afternoon "it was likely" that she did not go to Mrs. Lazarus' apartment that day (3282-3).

Mr. Herman saw Miss Ede and her attorney on a second occasion, October 29, 1964 (3284). A conversation of an hour's duration between Miss Ede and Mr. Herman ensued; no notes were taken (3298). "She was very upset, emotionally involved with her own affairs. Most of the time I was listening to her and letting her run off at

the mouth until she had finished telling me about her own problems, and then I would ask her a question here and there as I could " (3303). When "pressed" about her recollections of October 10, Miss Ede replied "I have none. I don't remember. I don't remember" (3285). Questions directed at Miss Ede's use of an intercom to relay a message to Geri Boxer "always" brought the same response, "I can't remember" (3286-8). Miss Ede never denied that she had a conversation with Geri Boxer over the intercom, but merely had "no recollection one way or the other" (3287, 3320). A Q. and A. was then stenographically recorded which summarized Miss Ede's total account (3287, 3299, 189 B-196 B). Her attorney was given a copy (3287).

No notes were taken of the conference; "I couldn't because it was all negative. There was nothing to take notes about" (3298).

> "Q. At any time, Mr. Herman, in your presence on October the 29th did Sandra Ede tell you that she had never, not only on October the 10th, 1963, but at any time, did she ever tell you that she had never given any messages to anybody on the intercom?
>
> "A. No" (3288). (See also 3320.)